

# **Exhibit 3**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROSS UNIVERSITY SCHOOL OF  
MEDICINE, LTD.,

Plaintiff,

-against-

Case No.  
09 Civ. 1410  
(KAM) (RLM)

BROOKLYN-QUEENS HEALTH CARE,  
INC. and WYCKOFF HEIGHTS  
MEDICAL CENTER,

Defendants.

-----X

Baker Hostetler  
45 Rockefeller Plaza  
11th Floor  
New York, New York 10111

June 1, 2011  
10:09 a.m.

CONFIDENTIAL DEPOSITION of DAVID  
HOFFMAN, taken on behalf of the Plaintiff and  
held before Ashley Shugar, a certified court  
reporter and Notary Public of the State of  
New York.

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<p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF:</p> <p>4</p> <p>5 BAKER HOSTETLER</p> <p>6 191 North Wacker Drive</p> <p>7 Suite 3100</p> <p>8 Chicago, Illinois 60606</p> <p>9 (312) 416-6225</p> <p>10 BY: GEORGE J. TZANETOPOULOS, ESQ.</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANT:</p> <p>13</p> <p>14 K &amp; L GATES LLP</p> <p>15 599 Lexington Avenue</p> <p>16 New York, New York 10022</p> <p>17 (212) 536-3900</p> <p>18 BY: WALTER P. LOUGHLIN, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>***</p>	<p>4</p> <p>1</p> <p>2 (The following transcript has been</p> <p>3 deemed confidential.)</p> <p>4 DAVID HOFFMAN,</p> <p>5 a witness, after having been first</p> <p>6 duly sworn by a Notary Public of</p> <p>7 the State of New York, was examined</p> <p>8 and testified as follows:</p> <p>9 MR. TZANETOPOULOS: This is the</p> <p>10 deposition of David Hoffman.</p> <p>11 Defense counsel and I have agreed</p> <p>12 that, really, for the convenience of the</p> <p>13 parties and the court reporter, for</p> <p>14 present, we'll designate the whole</p> <p>15 deposition as confidential under the</p> <p>16 Court's protective order. And we can</p> <p>17 confer to try to undesignate it if that</p> <p>18 ever becomes important to do.</p> <p>19 I'd also like to make Exhibit No. 1</p> <p>20 to the deposition transcript the</p> <p>21 protective order's acknowledgement as</p> <p>22 signed by our court reporter.</p> <p>23 (Hoffman Exhibit No. 1, Protective</p> <p>24 Order signed by the court reporter, was</p> <p>25 marked for identification.)</p>
<p>3</p> <p>1</p> <p>2 STIPULATIONS</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED</p> <p>5 by and between the attorneys for the</p> <p>6 respective parties herein that the sealing,</p> <p>7 filing and certification of the within</p> <p>8 deposition be waived; that such deposition</p> <p>9 may be signed and sworn to before any officer</p> <p>10 authorized to administer an oath with the</p> <p>11 same force and effect as if signed and sworn</p> <p>12 to before a Judge of this court.</p> <p>13 IT IS FURTHER STIPULATED AND AGREED</p> <p>14 that all objections, except as to form, are</p> <p>15 reserved to the time of trial.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>***</p>	<p>5</p> <p>1 Confidential - D. Hoffman</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. TZANETOPOULOS:</p> <p>4 Q. Mr. Hoffman, have you given</p> <p>5 depositions before?</p> <p>6 A. Yes.</p> <p>7 Q. How many, approximately?</p> <p>8 A. Less than a hundred.</p> <p>9 Q. All right. More than ten?</p> <p>10 A. Possibly.</p> <p>11 Q. You're familiar enough then, we'll</p> <p>12 give you the short version of the ground</p> <p>13 rules.</p> <p>14 As you know, I'll be asking a</p> <p>15 series of questions and you'll be giving</p> <p>16 answers. If you do not hear me, please let</p> <p>17 me know that. All right?</p> <p>18 A. Uh-huh. Yes.</p> <p>19 Q. That's what the next rule is: Nods</p> <p>20 of the head and uh-huhs don't work. Please</p> <p>21 say "yes," "no."</p> <p>22 If you need a break, let us know,</p> <p>23 and we'll be happy to take one.</p> <p>24 Did you give a deposition in the</p> <p>25 litigation between Wyckoff Heights Medical</p>

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<p>6</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Center and American University of the</b></p> <p>3 <b>Caribbean?</b></p> <p>4 A. Not that I recall.</p> <p>5 <b>Q. Was your testimony taken in any</b></p> <p>6 <b>fashion in that case?</b></p> <p>7 A. We had a court ordered mediation</p> <p>8 session.</p> <p>9 MR. LOUGHLIN: I don't believe</p> <p>10 there were any depositions in that case.</p> <p>11 I could be mistaken.</p> <p>12 THE WITNESS: The only deposition I</p> <p>13 recall is a deposition taken of the CFO.</p> <p>14 I don't recall giving a deposition,</p> <p>15 which does not mean I didn't, it just</p> <p>16 means I don't recall.</p> <p>17 BY MR. TZANETOPOULOS:</p> <p>18 <b>Q. All right. What have you done to</b></p> <p>19 <b>prepare for today's deposition?</b></p> <p>20 A. Nothing.</p> <p>21 <b>Q. Did you review any documents in</b></p> <p>22 <b>advance of it?</b></p> <p>23 A. I review lots of documents in my</p> <p>24 role as general counsel, not in preparation</p> <p>25 for this deposition.</p>	<p>8</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. I have been employed by Wyckoff</p> <p>3 from 2003 to present. I had a brief period</p> <p>4 when I was not general counsel but remained</p> <p>5 as an employee of the hospital from the very</p> <p>6 end of 2007 until November 2008.</p> <p>7 <b>Q. What were the circumstances that</b></p> <p>8 <b>led to you not being general counsel from the</b></p> <p>9 <b>end of 2007 through November 2008?</b></p> <p>10 A. Tom Singleton insisted that I be</p> <p>11 fired.</p> <p>12 <b>Q. What was Mr. Singleton's position</b></p> <p>13 <b>at that time?</b></p> <p>14 A. He was a restructuring consultant</p> <p>15 retained at the direction of the commissioner</p> <p>16 of the New York State Department of Health to</p> <p>17 serve as chief restructuring officer.</p> <p>18 <b>Q. You said that Mr. Singleton</b></p> <p>19 <b>insisted that you be fired. Fired from the</b></p> <p>20 <b>hospital's employment or just removed from</b></p> <p>21 <b>the position of general counsel?</b></p> <p>22 A. Fired from the hospital's</p> <p>23 employment.</p> <p>24 <b>Q. Did that happen?</b></p> <p>25 A. Pursuant to a severance, agreement,</p>
<p>7</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Q. Would you please take us through</b></p> <p>3 <b>the -- I guess from the end of college</b></p> <p>4 <b>forward, the short version of David Hoffman's</b></p> <p>5 <b>CV.</b></p> <p>6 A. Education and employment?</p> <p>7 <b>Q. Employment.</b></p> <p>8 A. I was admitted to practice in 1987.</p> <p>9 I was first employed out of law school at the</p> <p>10 firm of Martin Clearwater &amp; Bell until</p> <p>11 January of 1988. I commenced employment as</p> <p>12 an associate at Kanterman Taub &amp; Brightner in</p> <p>13 1988. I became a partner in 1993. In 1994,</p> <p>14 Brightner and I left and formed Brightner &amp;</p> <p>15 Hoffman. We practiced as Brightner &amp; Hoffman</p> <p>16 until 1999 and then formed a new firm and was</p> <p>17 joined by Daniel Arshack. We formed Hoffman</p> <p>18 &amp; Arshack. We practiced together until 2003</p> <p>19 when I became general counsel at Wyckoff</p> <p>20 Heights Medical Center. I'm also employed as</p> <p>21 an adjunct professor of law at Cardozo Law</p> <p>22 School where I teach bioethics.</p> <p>23 <b>Q. Have you been employed as general</b></p> <p>24 <b>counsel of Wyckoff Heights Medical Center</b></p> <p>25 <b>from 2003 to the present?</b></p>	<p>9</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 I remained employed through the date of</p> <p>3 Mr. Singleton's firing and was then</p> <p>4 reinstated and the severance agreement was</p> <p>5 nullified.</p> <p>6 <b>Q. Did Mr. Singleton tell you why it</b></p> <p>7 <b>was that he wished you to be dismissed?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Did anybody else tell you why</b></p> <p>10 <b>Mr. Singleton wished you to be dismissed?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Do you have a sense of why he</b></p> <p>13 <b>wanted you out?</b></p> <p>14 A. Objection to form.</p> <p>15 I don't know what you mean by</p> <p>16 "sense."</p> <p>17 <b>Q. Do you have any understanding of</b></p> <p>18 <b>why it is that he wanted you no longer to be</b></p> <p>19 <b>general counsel?</b></p> <p>20 A. I can't answer the question the way</p> <p>21 you asked it.</p> <p>22 <b>Q. Do you have a belief as to why it</b></p> <p>23 <b>is that Singleton wanted you out?</b></p> <p>24 A. A belief? No.</p> <p>25 <b>Q. Do you have any idea why it is that</b></p>

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<p style="text-align: right;">10</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>he wanted you out?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. What is your idea?</b></p> <p>5 A. I'm going to object to that</p> <p>6 question on the grounds that it calls for</p> <p>7 disclosing privileged communication between</p> <p>8 me and members of the Board of Trustees, my</p> <p>9 client.</p> <p>10 <b>Q. Let's see if we can establish</b></p> <p>11 <b>whether or not there's a foundation for a</b></p> <p>12 <b>claim of privilege.</b></p> <p>13 <b>Do all of your ideas about why</b></p> <p>14 <b>Mr. Singleton wanted you out come from</b></p> <p>15 <b>communications that you had with Board</b></p> <p>16 <b>members of Wyckoff Heights Medical Center?</b></p> <p>17 THE WITNESS: Can you read that</p> <p>18 back.</p> <p>19 (The requested portion of the</p> <p>20 record was read back.)</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. TZANETOPOULOS:</p> <p>23 <b>Q. Who informed you that you were</b></p> <p>24 <b>fired as general counsel?</b></p> <p>25 A. Rick Zall.</p>	<p style="text-align: right;">12</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>members on which you're claiming privilege,</b></p> <p>3 <b>did they occur before Mr. Zall informed you</b></p> <p>4 <b>you were fired?</b></p> <p>5 A. I'm not claiming privilege</p> <p>6 concerning conversations. I'm claiming</p> <p>7 privilege concerning the basis for my ideas</p> <p>8 about why Singleton insisted that I be fired.</p> <p>9 That was your question: Ideas.</p> <p>10 <b>Q. And as I understand it, your ideas</b></p> <p>11 <b>came from conversations with Board members;</b></p> <p>12 <b>is that correct?</b></p> <p>13 A. I believe my prior testimony was</p> <p>14 that disclosing to you ideas that I have</p> <p>15 about why Singleton insisted that I be fired</p> <p>16 would require that I -- or would amount to my</p> <p>17 disclosing information -- privileged</p> <p>18 communication.</p> <p>19 MR. LOUGHLIN: Privileged</p> <p>20 communication.</p> <p>21 THE WITNESS: Which is privileged</p> <p>22 communication between myself and members</p> <p>23 of the Board.</p> <p>24 BY MR. TZANETOPOULOS:</p> <p>25 <b>Q. My question to you, sir, is: The</b></p>
<p style="text-align: right;">11</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Q. And what was his position?</b></p> <p>3 A. Partner at Proskauer Rose.</p> <p>4 <b>Q. The conversations with Board</b></p> <p>5 <b>members in which you got information about</b></p> <p>6 <b>why Singleton wanted you out, did those occur</b></p> <p>7 <b>before or after you spoke with Mr. Zall or</b></p> <p>8 <b>both?</b></p> <p>9 A. Objection. Foundation.</p> <p>10 <b>Q. I'm sorry, you don't get to object.</b></p> <p>11 A. Yeah, I do.</p> <p>12 <b>Q. No, you don't.</b></p> <p>13 A. Yeah, in New York. Yeah, I've gone</p> <p>14 for rulings on this.</p> <p>15 <b>Q. That's fine.</b></p> <p>16 <b>As you know, we're on foundational</b></p> <p>17 <b>questions so you have to answer subject to</b></p> <p>18 <b>the objection.</b></p> <p>19 A. I can't. It's like asking me if</p> <p>20 I've stopped beating my dog. We haven't</p> <p>21 established if I own a dog.</p> <p>22 MR. LOUGHLIN: Why don't you</p> <p>23 rephrase it, George, and see.</p> <p>24 BY MR. TZANETOPOULOS:</p> <p>25 <b>Q. The conversations with Board</b></p>	<p style="text-align: right;">13</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>ideas that you had, did they come from</b></p> <p>3 <b>communications with Board members?</b></p> <p>4 A. In part, yes.</p> <p>5 <b>Q. Those communications, did they</b></p> <p>6 <b>occur before or after you had been informed</b></p> <p>7 <b>that you were fired?</b></p> <p>8 A. Before.</p> <p>9 <b>Q. Did any occur after?</b></p> <p>10 A. I don't recall.</p> <p>11 <b>Q. The communications you had with</b></p> <p>12 <b>Board members that form the basis of your</b></p> <p>13 <b>ideas, were any of those in writing?</b></p> <p>14 THE WITNESS: Can you read that</p> <p>15 back.</p> <p>16 (The requested portion of the</p> <p>17 record was read back.)</p> <p>18 THE WITNESS: There were written</p> <p>19 communications that I had with Board</p> <p>20 members that relate to the subject</p> <p>21 matter of your question.</p> <p>22 BY MR. TZANETOPOULOS:</p> <p>23 <b>Q. Were those writings e-mails?</b></p> <p>24 A. I don't believe so, no. But I</p> <p>25 can't say with certainty.</p>

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<p style="text-align: right;">14</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Q. Memoranda?</b></p> <p>3 A. Written documents provided to the</p> <p>4 Board.</p> <p>5 <b>Q. Were those documents written by</b></p> <p>6 <b>you?</b></p> <p>7 A. Uh-huh. Yes.</p> <p>8 <b>Q. And you provided them to the Board?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. The Board as a whole or certain</b></p> <p>11 <b>Board members?</b></p> <p>12 A. At a meeting -- an ad hoc meeting</p> <p>13 with Board members.</p> <p>14 <b>Q. And the Board we're talking about,</b></p> <p>15 <b>that would be the Wyckoff Heights Medical</b></p> <p>16 <b>Center Board?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Which Board members were present?</b></p> <p>19 A. I don't recall.</p> <p>20 <b>Q. Was Mr. Rucigay present?</b></p> <p>21 A. Mr. Rucigay has been present at</p> <p>22 meetings that I've participated in. I don't</p> <p>23 know if he was present at meetings where I</p> <p>24 had communications with Board members that</p> <p>25 relate to my ideas about why Tom Singelton</p>	<p style="text-align: right;">16</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Mr. Zall?</b></p> <p>3 A. The severance agreement prepared by</p> <p>4 Mr. Zall's firm was signed by Mr. Rucigay.</p> <p>5 <b>Q. So Mr. Rucigay was aware,</b></p> <p>6 <b>obviously, that you had been fired? He</b></p> <p>7 <b>signed the agreement, right?</b></p> <p>8 A. (Nods head.)</p> <p>9 <b>Q. Before your firing was one of your</b></p> <p>10 <b>jobs to attend Board meetings?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. After you were fired as general</b></p> <p>13 <b>counsel and before you were reinstated,</b></p> <p>14 <b>during that period, did you attend Board</b></p> <p>15 <b>meetings?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Did you actually work at the</b></p> <p>18 <b>hospital?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Were you paid essentially not to</b></p> <p>21 <b>work at the hospital?</b></p> <p>22 A. Pursuant to the severance agreement</p> <p>23 I continued to receive my salary, and would</p> <p>24 have continued to receive my salary through</p> <p>25 the end of January of 2009, but I returned to</p>
<p style="text-align: right;">15</p> <p>1 Confidential - D. Hoffman</p> <p>2 demanded that I be fired.</p> <p>3 <b>Q. Did you ever complain to the</b></p> <p>4 <b>Wyckoff Heights Medical Center Board that</b></p> <p>5 <b>Mr. Singelton was engaging in activities that</b></p> <p>6 <b>he was not authorized to engage in on behalf</b></p> <p>7 <b>of Wyckoff Heights Medical Center?</b></p> <p>8 A. Objection. Privilege.</p> <p>9 <b>Q. Are you claiming the</b></p> <p>10 <b>attorney-client privilege with respect to</b></p> <p>11 <b>that question?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Did the Wyckoff Heights Medical</b></p> <p>14 <b>Center Board -- Well, we know the answer to</b></p> <p>15 <b>that. I'm sorry.</b></p> <p>16 <b>Before Mr. Singelton fired you was</b></p> <p>17 <b>one of your duties to attend meetings of the</b></p> <p>18 <b>Wyckoff Heights Medical Center Board of</b></p> <p>19 <b>Trustees?</b></p> <p>20 A. Objection to form and foundation.</p> <p>21 I never testified that Mr. Singelton fired</p> <p>22 me.</p> <p>23 <b>Q. All right. Before you were fired</b></p> <p>24 <b>from your position as -- Strike that.</b></p> <p>25 <b>Who is it that fired you?</b></p>	<p style="text-align: right;">17</p> <p>1 Confidential - D. Hoffman</p> <p>2 my position as general counsel before then.</p> <p>3 <b>Q. Right.</b></p> <p>4 <b>And during that period before you</b></p> <p>5 <b>returned, did you do any work on behalf of</b></p> <p>6 <b>the hospital?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Have you ever held positions at</b></p> <p>9 <b>Brooklyn-Queens Health Care?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. What positions?</b></p> <p>12 A. I was the general counsel.</p> <p>13 <b>Q. Is there a written contract between</b></p> <p>14 <b>you and Brooklyn-Queens Health Care regarding</b></p> <p>15 <b>that position?</b></p> <p>16 A. I don't recall.</p> <p>17 <b>Q. Is there a written contract between</b></p> <p>18 <b>you and Wyckoff Heights Medical Center</b></p> <p>19 <b>regarding your employment as general counsel</b></p> <p>20 <b>at Wyckoff?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Did you hold any positions at</b></p> <p>23 <b>Caritas -- Let me go back a step. The names</b></p> <p>24 <b>changed so I want to be sure I got it right.</b></p> <p>25 <b>Is it Caritas Health Care? Caritas</b></p>

<p>18</p> <p>1 Confidential - D. Hoffman</p> <p>2 Health Care Planning? What is the entity</p> <p>3 that is Wyckoff's affiliate that was called</p> <p>4 Caritas?</p> <p>5 A. Objection to form. And I can't</p> <p>6 answer the question the way you asked it.</p> <p>7 It's not answerable.</p> <p>8 MR. LOUGHLIN: I think the</p> <p>9 affiliate issue is something that you</p> <p>10 may want to rephrase. I'm sure the</p> <p>11 witness can describe the two different</p> <p>12 Caritas entities that you described,</p> <p>13 what they are and what they mean.</p> <p>14 BY MR. TZANETOPOULOS:</p> <p>15 Q. Was Brooklyn-Queens Health Care a</p> <p>16 member of an entity or entities with Caritas</p> <p>17 in its name?</p> <p>18 A. No.</p> <p>19 Q. Before they closed, what was the</p> <p>20 entity that held ownership interests in</p> <p>21 St. Mary's -- or I'm sorry, St. John's</p> <p>22 Hospital and Mary Immaculate Hospital?</p> <p>23 A. Caritas Health Care, Inc. was an</p> <p>24 Article 28 licensed not-for-profit</p> <p>25 corporation in the state of New York. And</p>	<p>20</p> <p>1 Confidential - D. Hoffman</p> <p>2 Caritas?</p> <p>3 A. Yes.</p> <p>4 Q. Which positions?</p> <p>5 A. I was the general counsel of</p> <p>6 Caritas.</p> <p>7 Q. Is there a written employment</p> <p>8 agreement between you and Caritas concerning</p> <p>9 that position?</p> <p>10 A. I don't recall.</p> <p>11 Q. How is it that you were appointed</p> <p>12 to become general counsel of Brooklyn-Queens</p> <p>13 Health Care?</p> <p>14 A. I don't recall.</p> <p>15 Q. How about for Caritas?</p> <p>16 A. I don't recall.</p> <p>17 Q. Is there any documentation</p> <p>18 concerning your appointment as general</p> <p>19 counsel of Brooklyn-Queens Health Care?</p> <p>20 A. I don't recall.</p> <p>21 Q. Same for Caritas.</p> <p>22 A. I don't recall.</p> <p>23 Q. Was any portion of your salary or</p> <p>24 benefits during the time that you were</p> <p>25 general counsel of Brooklyn-Queens Health</p>
<p>19</p> <p>1 Confidential - D. Hoffman</p> <p>2 Brooklyn-Queens Health Care was the sole</p> <p>3 member of that corporation.</p> <p>4 Q. During the time that</p> <p>5 Brooklyn-Queens Health Care was sole member</p> <p>6 of Caritas -- Strike that.</p> <p>7 During the time that it was</p> <p>8 affiliated with Brooklyn-Queens Health Care,</p> <p>9 was Caritas Health Care, Inc. called by any</p> <p>10 other names?</p> <p>11 A. I don't recall as to the precise</p> <p>12 chronology. But prior to Caritas Health</p> <p>13 Care, Inc. becoming an Article 28 licensed</p> <p>14 operator of St. Johns and Mary Immaculate</p> <p>15 hospitals, Caritas Health Care, Inc. was</p> <p>16 incorporated as Caritas Health Care Planning,</p> <p>17 Inc.</p> <p>18 Q. When did -- For ease of use, can we</p> <p>19 agree to call that entity Caritas?</p> <p>20 A. We can.</p> <p>21 Q. All right.</p> <p>22 When did Caritas become a licensed</p> <p>23 operator of hospitals?</p> <p>24 A. On or about December 27th, 2006.</p> <p>25 Q. Have you ever held any positions at</p>	<p>21</p> <p>1 Confidential - D. Hoffman</p> <p>2 Care allocated to Brooklyn-Queens Health</p> <p>3 Care?</p> <p>4 A. I don't know.</p> <p>5 Q. Is the same true of your time at</p> <p>6 Caritas as general counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Who would know that?</p> <p>9 A. I don't know.</p> <p>10 Q. If you wished to find out, where</p> <p>11 would you start?</p> <p>12 A. If I wanted to find out, I would</p> <p>13 ask the people in the business office at</p> <p>14 Wyckoff Heights Medical Center or I would ask</p> <p>15 the consultant who currently operates</p> <p>16 Caritas.</p> <p>17 Q. And who is that consultant?</p> <p>18 A. John Lavan.</p> <p>19 I might also ask Tom Singelton, the</p> <p>20 prior consultant who operated Caritas.</p> <p>21 Q. I've seen on some of the signature</p> <p>22 blocks of documents that you have signed an</p> <p>23 indication that you are -- you have a</p> <p>24 position. I don't know if you're the ethics</p> <p>25 officer or the ethics vice president.</p>



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<p style="text-align: right;">22</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>What is your title with respect to</b></p> <p>3 <b>ethics?</b></p> <p>4 A. At Wyckoff I am the vice president</p> <p>5 for ethics and compliance and general</p> <p>6 counsel; that's what it says on my business</p> <p>7 card.</p> <p>8 <b>Q. All right. Did you hold those</b></p> <p>9 <b>ethics and compliance positions at</b></p> <p>10 <b>Brooklyn-Queens Health Care?</b></p> <p>11 A. I don't remember.</p> <p>12 <b>Q. How about at Caritas?</b></p> <p>13 A. I don't remember.</p> <p>14 <b>Q. How long have you had an ethics and</b></p> <p>15 <b>compliance component to your position?</b></p> <p>16 A. I first became employed by Wyckoff</p> <p>17 in January of 2003 as the corporate</p> <p>18 compliance officer, which was a part-time</p> <p>19 employment. I became employed in a full-time</p> <p>20 capacity as the vice president for ethics and</p> <p>21 compliance and general counsel at Wyckoff on</p> <p>22 June 30th, 2003.</p> <p>23 <b>Q. And with respect to ethics, what</b></p> <p>24 <b>duties do you -- Let me ask a better</b></p> <p>25 <b>question.</b></p>	<p style="text-align: right;">24</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>general counsel, who was?</b></p> <p>3 A. Prior to my becoming general</p> <p>4 counsel in 2003, for a brief time an</p> <p>5 individual named Diane or Diana Goldwasser</p> <p>6 served as general counsel. Prior to that,</p> <p>7 there was no general counsel.</p> <p>8 <b>Q. During the end of 2007 through the</b></p> <p>9 <b>November of 2008 period who was general</b></p> <p>10 <b>counsel?</b></p> <p>11 A. There was no general counsel.</p> <p>12 <b>Q. Before Mr. Singleton arranged for</b></p> <p>13 <b>your dismissal -- Strike that.</b></p> <p>14 <b>Before you were dismissed at the</b></p> <p>15 <b>end of 2007 as general counsel were there any</b></p> <p>16 <b>other in-house lawyers at Wyckoff other than</b></p> <p>17 <b>you?</b></p> <p>18 A. Claire Mullally was employed in</p> <p>19 some capacity prior to my being dismissed. I</p> <p>20 don't recall what her title was but she was,</p> <p>21 at the time, an attorney admitted to practice</p> <p>22 law in the state of New York.</p> <p>23 <b>Q. Did she report to you?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Did you hire her?</b></p>
<p style="text-align: right;">23</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>What are your duties with respect</b></p> <p>3 <b>to ethics at Wyckoff?</b></p> <p>4 A. I am the bioethics consultant for</p> <p>5 clinical matters. I provide education and</p> <p>6 training in ethics to the staff and students</p> <p>7 of Wyckoff Heights Medical Center. And I am</p> <p>8 in charge of ensuring ethical business</p> <p>9 practices in the governance and operation of</p> <p>10 the hospital, Wyckoff.</p> <p>11 <b>Q. And how about the compliance</b></p> <p>12 <b>portion of the job, what are your duties with</b></p> <p>13 <b>respect to compliance?</b></p> <p>14 A. Currently?</p> <p>15 <b>Q. Let's start there.</b></p> <p>16 A. The corporate compliance officer</p> <p>17 and the director of internal audit and</p> <p>18 corporate compliance report to me. I make</p> <p>19 sure that they're properly maintaining our</p> <p>20 mandatory corporate compliance program.</p> <p>21 <b>Q. Has that been different in the past</b></p> <p>22 <b>while you were at Wyckoff?</b></p> <p>23 A. Prior to sometime last year I was</p> <p>24 the corporate compliance officer.</p> <p>25 <b>Q. During the time that you were not</b></p>	<p style="text-align: right;">25</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. Was it Mr. Singleton or someone</b></p> <p>4 <b>from FTI who arranged for her to be hired at</b></p> <p>5 <b>the hospital?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Did Ms. Mullally remain at the</b></p> <p>8 <b>hospital after you were discharged as general</b></p> <p>9 <b>counsel?</b></p> <p>10 A. I'm sorry. I couldn't hear you,</p> <p>11 you turned the pages.</p> <p>12 <b>Q. Did Ms. Mullally remain at the</b></p> <p>13 <b>hospital after you were discharged?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. To your understanding did she serve</b></p> <p>16 <b>as the chief legal officer during that time?</b></p> <p>17 A. I believe during that period of</p> <p>18 time she was associate general counsel.</p> <p>19 <b>Q. For this next set of questions,</b></p> <p>20 <b>just so you know where I'm going and we can</b></p> <p>21 <b>get you out of here a little quicker, what</b></p> <p>22 <b>I'd like to do is talk about the corporate</b></p> <p>23 <b>structure of the different entities on the</b></p> <p>24 <b>defendant's side that appear to be involved</b></p> <p>25 <b>in this case.</b></p>



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<p style="text-align: right;">26</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>So Brooklyn-Queens Health Care is a</b></p> <p>3 <b>New York not-for-profit?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Did it used to be called WHMC</b></p> <p>6 <b>Properties, Inc.?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. So WHMC Properties, Inc. and</b></p> <p>9 <b>Brooklyn-Queens Health Care are the same</b></p> <p>10 <b>entity, just different names for the same</b></p> <p>11 <b>entity?</b></p> <p>12 A. Correct.</p> <p>13 <b>Q. Wyckoff Heights Medical Center is</b></p> <p>14 <b>also a New York not-for-profit?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Is Brooklyn-Queens Health Care the</b></p> <p>17 <b>sole member of Wyckoff Heights Medical</b></p> <p>18 <b>Center?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Has that always been the case</b></p> <p>21 <b>during your time at the hospital?</b></p> <p>22 A. No.</p> <p>23 <b>Q. Who was the member or members of</b></p> <p>24 <b>Wyckoff Heights Medical Center when you began</b></p> <p>25 <b>at the hospital?</b></p>	<p style="text-align: right;">28</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Street, Brooklyn, New York.</b></p> <p>3 <b>Q. And that has been the only</b></p> <p>4 <b>offices -- Strike that.</b></p> <p>5 <b>Other than the address for service</b></p> <p>6 <b>of process has Brooklyn-Queens Health Care</b></p> <p>7 <b>ever had offices?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>10 <b>have any bank accounts?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Has it ever had them?</b></p> <p>13 A. No.</p> <p>14 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>15 <b>have any employees?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Has it ever had any?</b></p> <p>18 A. No.</p> <p>19 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>20 <b>have its own telephones?</b></p> <p>21 A. Nope.</p> <p>22 <b>Q. Has it ever had them?</b></p> <p>23 A. No.</p> <p>24 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>25 <b>have its own computers?</b></p>
<p style="text-align: right;">27</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. There were none.</p> <p>3 <b>Q. Caritas, at least before the</b></p> <p>4 <b>bankruptcy, also was a New York</b></p> <p>5 <b>not-for-profit?</b></p> <p>6 A. Was and is.</p> <p>7 <b>Q. All right. And BQHC -- or I'm</b></p> <p>8 <b>sorry, Brooklyn-Queens Health Care is the</b></p> <p>9 <b>sole member of Caritas?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>12 <b>still exist?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Does it have holdings in any</b></p> <p>15 <b>entities other than Wyckoff Heights Medical</b></p> <p>16 <b>Center or Caritas?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>19 <b>have a physical location or offices?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Has it ever had them?</b></p> <p>22 A. It has an address registered with</p> <p>23 <b>the New York State Secretary of State for</b></p> <p>24 <b>service of process. That address is Wyckoff</b></p> <p>25 <b>Heights Medical Center, at 374 Stockholm</b></p>	<p style="text-align: right;">29</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. Not insofar as I'm aware.</p> <p>3 <b>Q. Has it ever had them?</b></p> <p>4 A. Not that I'm aware of.</p> <p>5 <b>Q. Are you aware of Brooklyn-Queens</b></p> <p>6 <b>Health Care ever having paid money to anyone?</b></p> <p>7 A. Brooklyn-Queens Health Care doesn't</p> <p>8 <b>have a bank account, so it couldn't.</b></p> <p>9 <b>Q. Does Brooklyn-Queens Health Care</b></p> <p>10 <b>have corporate officers?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Who are they?</b></p> <p>13 A. Emil Rucigay is the chairman of the</p> <p>14 <b>Board of Brooklyn-Queens Health Care. I</b></p> <p>15 <b>can't remember off the top of my head who the</b></p> <p>16 <b>other officers are. But there's a secretary,</b></p> <p>17 <b>a treasurer, and a vice chair.</b></p> <p>18 <b>Q. And the offices you just mentioned,</b></p> <p>19 <b>secretary, treasurer, and vice chair, are</b></p> <p>20 <b>those secretary, treasurer, and vice chair of</b></p> <p>21 <b>the Brooklyn-Queens Health Care Board of</b></p> <p>22 <b>Trustees?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Does the corporation,</b></p> <p>25 <b>Brooklyn-Queens Health Care, have officers</b></p>

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<p style="text-align: right;">30</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>other than the officers of its Board of</b></p> <p>3 <b>Trustees?</b></p> <p>4 A. It had a chief executive officer at</p> <p>5 the time of its creation as the sole</p> <p>6 corporate member and passive parent of</p> <p>7 Wyckoff and Caritas.</p> <p>8 <b>Q. Who is that?</b></p> <p>9 A. Initially Dominick Gio.</p> <p>10 <b>Q. From the time of its creation to</b></p> <p>11 <b>the present has it always had a CEO?</b></p> <p>12 A. I can't speak to what went on</p> <p>13 during the period that I was not general</p> <p>14 counsel.</p> <p>15 <b>Q. All right. Exclude that period.</b></p> <p>16 <b>Other than that.</b></p> <p>17 A. I don't know as a technical matter</p> <p>18 whether Brooklyn-Queens Health Care currently</p> <p>19 has a chief executive officer.</p> <p>20 <b>Q. Other than Mr. Gio, are you aware</b></p> <p>21 <b>of anybody ever having been chief executive</b></p> <p>22 <b>officer of Brooklyn-Queens Health Care?</b></p> <p>23 A. I don't know if Tom Singelton was</p> <p>24 designated as chief executive officer of</p> <p>25 Brooklyn-Queens Health Care. I know that he</p>	<p style="text-align: right;">32</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 Heights Medical Center.</p> <p>3 <b>Q. Other than the parking lot, any</b></p> <p>4 <b>other assets?</b></p> <p>5 A. Nope.</p> <p>6 <b>Q. As the sole member of Wyckoff</b></p> <p>7 <b>Heights Medical Center, does Brooklyn-Queens</b></p> <p>8 <b>Health Care have the power to appoint</b></p> <p>9 <b>trustees to the Wyckoff Heights Medical</b></p> <p>10 <b>Center Board of Trustees?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Does it have the power to discharge</b></p> <p>13 <b>trustees from the Wyckoff Heights Medical</b></p> <p>14 <b>Center Board of Trustees?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Does Wyckoff Heights Medical Center</b></p> <p>17 <b>have any bank accounts?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Does Wyckoff Heights Medical Center</b></p> <p>20 <b>have any employees?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. How many?</b></p> <p>23 A. I don't know exactly. Something in</p> <p>24 excess of 1800.</p> <p>25 <b>Q. Does Wyckoff Heights Medical Center</b></p>
<p style="text-align: right;">31</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 was the chief restructuring officer for</p> <p>3 Brooklyn-Queens Health Care at a point in</p> <p>4 time.</p> <p>5 <b>Q. If the Court were to enter a</b></p> <p>6 <b>multimillion dollar award against</b></p> <p>7 <b>Brooklyn-Queens Health Care in this case in</b></p> <p>8 <b>favor of Ross, could Brooklyn-Queens Health</b></p> <p>9 <b>Care pay that judgment?</b></p> <p>10 A. I don't know.</p> <p>11 <b>Q. We've discussed that</b></p> <p>12 <b>Brooklyn-Queens Health Care doesn't have a</b></p> <p>13 <b>bank account and we've talked about its</b></p> <p>14 <b>memberships in Caritas and Wyckoff.</b></p> <p>15 <b>Does Brooklyn-Queens Health Care</b></p> <p>16 <b>have any other assets?</b></p> <p>17 A. I would object to the form of the</p> <p>18 question in that it asserts that membership</p> <p>19 in a not-for-profit corporation is an asset.</p> <p>20 Notwithstanding that objection,</p> <p>21 Brooklyn-Queens Health Care has a single</p> <p>22 asset, which is a parking lot in Brooklyn.</p> <p>23 <b>Q. And where is that parking lot?</b></p> <p>24 A. It's located between Stanhope</p> <p>25 Street and Himrod Street opposite Wyckoff</p>	<p style="text-align: right;">33</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>have telephones?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Does Wyckoff Heights Medical Center</b></p> <p>5 <b>have corporate officers other than the</b></p> <p>6 <b>officers of its Board of Trustees?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Does Wyckoff Heights Medical Center</b></p> <p>9 <b>have its own computers?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Let's move from corporate structure</b></p> <p>12 <b>to generally about what we should talk about,</b></p> <p>13 <b>and what you don't know about because you</b></p> <p>14 <b>weren't there or didn't work on it.</b></p> <p>15 <b>Did you perform --</b></p> <p>16 A. I'm just going to object to that</p> <p>17 preface as being part of any question.</p> <p>18 <b>Q. It's not. I'm just trying to</b></p> <p>19 <b>orient you. I'm shifting gears and just</b></p> <p>20 <b>trying to be fair to you.</b></p> <p>21 A. No need.</p> <p>22 <b>Q. Did you perform any work in</b></p> <p>23 <b>connection with a contract that is entitled,</b></p> <p>24 <b>"Affiliation Agreement Between Ross</b></p> <p>25 <b>University School of Medicine, School of</b></p>

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<p style="text-align: right;">34</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Veterinary Medicine, Limited, Portsmouth,</b></p> <p>3 <b>Dominica and Brooklyn-Queens Health Care,</b></p> <p>4 <b>Inc."?</b></p> <p>5 A. Is that referring to -- Objection</p> <p>6 to form.</p> <p>7 Is that referring to a particular</p> <p>8 document?</p> <p>9 <b>Q. The document is the contract</b></p> <p>10 <b>itself. I'm just wondering if you worked on</b></p> <p>11 <b>the deal.</b></p> <p>12 A. Objection to form.</p> <p>13 There have been many deals between</p> <p>14 Wyckoff and Ross proposed, executed,</p> <p>15 modified. I've been consulted about many</p> <p>16 issues related to Wyckoff's relationship with</p> <p>17 Ross University Medical School over the</p> <p>18 course of the years.</p> <p>19 <b>Q. I'm just trying to sort out which</b></p> <p>20 <b>ones.</b></p> <p>21 A. Huh?</p> <p>22 <b>Q. I'm just trying to sort out which</b></p> <p>23 <b>ones right now.</b></p> <p>24 A. Yeah. If you show me a document,</p> <p>25 I'll tell you if it looks familiar.</p>	<p style="text-align: right;">36</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>and BQHC or any of BQHC's affiliates?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. As you understood it, who were the</b></p> <p>5 <b>business people in charge of the deal from</b></p> <p>6 <b>the hospital's side?</b></p> <p>7 A. Harold McDonald.</p> <p>8 <b>Q. Had Mr. McDonald been charged with</b></p> <p>9 <b>negotiating affiliation agreements with</b></p> <p>10 <b>Caribbean Medical Schools --</b></p> <p>11 A. I don't know.</p> <p>12 <b>Q. -- at that period of time?</b></p> <p>13 A. I don't know.</p> <p>14 <b>Q. Were you aware of anybody else who</b></p> <p>15 <b>was working on this particular deal for the</b></p> <p>16 <b>hospitals?</b></p> <p>17 MR. LOUGHLIN: Was he aware in --</p> <p>18 MR. TZANETOPOULOS: Right. In</p> <p>19 2006.</p> <p>20 MR. LOUGHLIN: -- 2006?</p> <p>21 MR. TZANETOPOULOS: Yes.</p> <p>22 THE WITNESS: I was not aware, no.</p> <p>23 BY MR. TZANETOPOULOS:</p> <p>24 <b>Q. This contract was amended in</b></p> <p>25 <b>December of 2007.</b></p>
<p style="text-align: right;">35</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>(Hoffman Exhibit No. 2, Affiliation</b></p> <p>3 <b>Agreement Between Ross School of</b></p> <p>4 <b>Medicine, School of Veterinary Medicine,</b></p> <p>5 <b>Limited, Portsmouth, Dominica and</b></p> <p>6 <b>Brooklyn-Queens Health Care, Inc., Bates</b></p> <p>7 <b>numbered ROSS0056 through ROSS006, was</b></p> <p>8 <b>marked for identification.)</b></p> <p>9 BY MR. TZANETOPOULOS:</p> <p>10 <b>Q. Mr. Hoffman, let me show you a</b></p> <p>11 <b>document that the court reporter has marked</b></p> <p>12 <b>as Hoffman Exhibit No. 2. It's entitled,</b></p> <p>13 <b>"Affiliation Agreement Between Ross School of</b></p> <p>14 <b>Medicine, School of Veterinary Medicine,</b></p> <p>15 <b>Limited, Portsmouth, Dominica and</b></p> <p>16 <b>Brooklyn-Queens Health Care, Inc." It starts</b></p> <p>17 <b>at Bates numbers ROSS0056 through ROSS0066.</b></p> <p>18 I'll talk about the document itself</p> <p>19 in some detail. But after you've looked at</p> <p>20 it, my question is: Did you work on this</p> <p>21 deal at all?</p> <p>22 A. No.</p> <p>23 <b>Q. During the November, December 2006</b></p> <p>24 <b>time frame, were you aware that this</b></p> <p>25 <b>transaction was being discussed between Ross</b></p>	<p style="text-align: right;">37</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Did you do any work in connection</b></p> <p>3 <b>with that first amendment?</b></p> <p>4 A. You'd have to show me the document</p> <p>5 in order for me to answer the question.</p> <p>6 (Hoffman Exhibit No. 3, Amendment</p> <p>7 to Affiliation Agreement Between Ross</p> <p>8 School of Medicine, School of Veterinary</p> <p>9 Medicine, Limited, Portsmouth, Dominica</p> <p>10 and Brooklyn-Queens Health Care, Inc.</p> <p>11 Through Caritas Health Care, Inc., Bates</p> <p>12 numbered ROSS0052 through ROSS0055, was</p> <p>13 marked for identification.)</p> <p>14 BY MR. TZANETOPOULOS:</p> <p>15 <b>Q. Mr. Hoffman, the court reporter has</b></p> <p>16 <b>handed you a document but I think it's</b></p> <p>17 <b>misstapled.</b></p> <p>18 MR. TZANETOPOULOS: Let's go off</p> <p>19 the record for a second.</p> <p>20 (Discussion off the record.)</p> <p>21 BY MR. TZANETOPOULOS:</p> <p>22 <b>Q. We've corrected the exhibit, so let</b></p> <p>23 <b>me start over with the exhibit.</b></p> <p>24 <b>Hoffman Exhibit No. 3 is entitled,</b></p> <p>25 <b>"Amendment To Affiliation Agreement Between</b></p>

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<p>1 Confidential - D. Hoffman</p> <p>2 Ross University," and it goes on. It begins</p> <p>3 with Bates number ROSS0052 and concludes with</p> <p>4 ROSS0055.</p> <p>5 Mr. Hoffman, did you do any work in</p> <p>6 connection with this amendment?</p> <p>7 A. No.</p> <p>8 (Hoffman Exhibit No. 4, Second</p> <p>9 Amendment to Affiliation Agreement</p> <p>10 Between Ross School of Medicine, School</p> <p>11 of Veterinary Medicine, Limited,</p> <p>12 Portsmouth, Dominica and Brooklyn-Queens</p> <p>13 Health Care, Inc. Through Caritas Health</p> <p>14 Care, Inc., Bates numbered ROSS0105</p> <p>15 through ROSS0109, was marked for</p> <p>16 identification.)</p> <p>17 BY MR. TZANETOPOULOS:</p> <p>18 Q. Mr. Hoffman, the court reporter has</p> <p>19 handed you a document marked Hoffman Exhibit</p> <p>20 No. 4. It's entitled, "Second Amendment to</p> <p>21 Affiliation Agreement Between Ross University</p> <p>22 School of Medicine," and it goes on. It</p> <p>23 begins with Bates number ROSS0105 and</p> <p>24 concludes with ROSS0109.</p> <p>25 Did you do any work on this deal?</p>	<p>1 Confidential - D. Hoffman</p> <p>2 that you asked it.</p> <p>3 Q. You're aware that in late 2006,</p> <p>4 early 2007 money was transferred from Caritas</p> <p>5 to Wyckoff?</p> <p>6 A. Is that a question?</p> <p>7 Q. Yes.</p> <p>8 A. What's the question?</p> <p>9 MR. LOUGHLIN: Do you have that</p> <p>10 knowledge?</p> <p>11 BY MR. TZANETOPOULOS:</p> <p>12 Q. Are you aware of that?</p> <p>13 A. I have no specific recollection of</p> <p>14 any particular transfers of money. I know</p> <p>15 that Wyckoff and Caritas were jointly engaged</p> <p>16 in a venture to establish a Central Business</p> <p>17 Office. And it was my understanding that</p> <p>18 were due to/due from transactions related to</p> <p>19 that joint venture.</p> <p>20 Q. And any time from 2006 to the</p> <p>21 present while you were working at Wyckoff</p> <p>22 have you performed any work in connection</p> <p>23 with establishing, or I guess revising,</p> <p>24 policies for Brooklyn-Queens Health Care or</p> <p>25 any of its affiliates regarding approvals for</p>
39	41
<p>1 Confidential - D. Hoffman</p> <p>2 A. No.</p> <p>3 Q. Did you perform any work in</p> <p>4 connection with the affiliation agreement or</p> <p>5 promissory note between Wyckoff and the</p> <p>6 American University of the Caribbean?</p> <p>7 A. I have no particular recollection</p> <p>8 whether I did or did not participate in the</p> <p>9 drafting of any agreements with AUC. I have,</p> <p>10 from time to time, been involved in</p> <p>11 discussions about agreements with AUC, some</p> <p>12 of which were consummated, some of which were</p> <p>13 not.</p> <p>14 Q. We'll talk about the specific</p> <p>15 documents in some detail in a little bit.</p> <p>16 But again, just to find out what we should</p> <p>17 talk about.</p> <p>18 Some of the documents that the</p> <p>19 defendants have produced in this case discuss</p> <p>20 a transfer of money from Caritas to Wyckoff</p> <p>21 in late 2006 and early 2007.</p> <p>22 Did you perform any work in</p> <p>23 connection with the issues raised by those</p> <p>24 transfers?</p> <p>25 A. I can't answer the question the way</p>	<p>1 Confidential - D. Hoffman</p> <p>2 transfers of money between the entities?</p> <p>3 A. I don't recall.</p> <p>4 Q. Are there any such policies?</p> <p>5 A. I don't recall.</p> <p>6 Q. If you wanted to find out if there</p> <p>7 were policies, how would you do so?</p> <p>8 A. I don't know.</p> <p>9 Q. Does Wyckoff have an official</p> <p>10 custodian of contracts into which it enters?</p> <p>11 Do you have a central repository,</p> <p>12 departmental repositories, is what I'm</p> <p>13 fishing at?</p> <p>14 A. Pursuant to the requirements of the</p> <p>15 anti self-referral statute, commonly known as</p> <p>16 the Stark Law, Wyckoff maintains a central</p> <p>17 contract repository in an electronic form.</p> <p>18 Q. Who is the custodian of that</p> <p>19 repository?</p> <p>20 A. Objection to form and foundation.</p> <p>21 The repository is a virtual</p> <p>22 repository. So I don't know that you could</p> <p>23 say that there is a custodian. There are</p> <p>24 paper copies of many contracts that are</p> <p>25 maintained in the administrative offices.</p>

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<p style="text-align: right;">42</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Q. Let's first address the virtual</b></p> <p>3 <b>aspect of that.</b></p> <p>4 <b>Who is the person or position who</b></p> <p>5 <b>is in charge of the maintenance of that</b></p> <p>6 <b>repository?</b></p> <p>7 A. From a legal perspective, me. From</p> <p>8 an IT perspective, the IT department.</p> <p>9 <b>Q. The paper copies of contracts, who</b></p> <p>10 <b>is the person or department who is</b></p> <p>11 <b>responsible for maintaining those copies?</b></p> <p>12 A. Those are generally maintained in</p> <p>13 the hospital's administrative office.</p> <p>14 <b>Q. And who is the person or position</b></p> <p>15 <b>who's responsible for maintaining them?</b></p> <p>16 A. It's been a number of different</p> <p>17 people over the years. And for obvious</p> <p>18 reasons, I don't know what happened during</p> <p>19 most of 2007.</p> <p>20 <b>Q. Right.</b></p> <p>21 <b>What is the position called?</b></p> <p>22 A. It's been a number of different</p> <p>23 individuals and positions.</p> <p>24 <b>Q. Is there a particular position who</b></p> <p>25 <b>is in charge of maintaining the contracts --</b></p>	<p style="text-align: right;">44</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. No. We had no such formal policy</p> <p>3 at that time.</p> <p>4 <b>Q. At that time, once a contract was</b></p> <p>5 <b>entered into, what would happen to the actual</b></p> <p>6 <b>written contract itself if policies were</b></p> <p>7 <b>followed?</b></p> <p>8 A. Objection to form.</p> <p>9 I've previously testified that</p> <p>10 there were no formal policies for BQHC,</p> <p>11 Caritas, or Wyckoff in December 2006 and</p> <p>12 January 2007 regarding custody of signed</p> <p>13 documents.</p> <p>14 MR. TZANETOPOULOS: Can we take a</p> <p>15 quick five-minute one here?</p> <p>16 MR. LOUGHLIN: Sure.</p> <p>17 (A brief recess was taken from</p> <p>18 11:16 a.m. to 11:26 a.m.)</p> <p>19 (Hoffman Exhibit No. 5,</p> <p>20 Administrative Services Agreement by and</p> <p>21 between Caritas Health Care Planning,</p> <p>22 Inc. And WHMC Properties, Inc. Dated as</p> <p>23 of August 21, 2006, Bates numbered BQHC</p> <p>24 00306 through BQHC 00328, was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">43</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Let me start again.</b></p> <p>3 <b>Is there a particular position or</b></p> <p>4 <b>person who has been in charge of maintaining</b></p> <p>5 <b>affiliation agreements with medical schools?</b></p> <p>6 A. Those agreements are maintained in</p> <p>7 the Wyckoff Heights Medical Center contract</p> <p>8 repository. And I'm in charge of that.</p> <p>9 <b>Q. During the time that you were at</b></p> <p>10 <b>the hospital through the present, when</b></p> <p>11 <b>Wyckoff entered into an affiliation</b></p> <p>12 <b>agreement, would the hospital's policies</b></p> <p>13 <b>require that you get a copy of that contract</b></p> <p>14 <b>once it was signed?</b></p> <p>15 A. The current version of the contract</p> <p>16 repository is a recent creation which was</p> <p>17 formed by pulling together electronic</p> <p>18 versions of documents from many different</p> <p>19 sources. There's no requirement that I can</p> <p>20 recall, per se, that obligates anyone to give</p> <p>21 me personally a copy of a contract.</p> <p>22 <b>Q. In December of 2006, January 2007,</b></p> <p>23 <b>were the policies such that a contract, like</b></p> <p>24 <b>Exhibit No. 2, be sent to you once it was</b></p> <p>25 <b>signed?</b></p>	<p style="text-align: right;">45</p> <p>1 Confidential - D. Hoffman</p> <p>2 (Hoffman Exhibit No. 6,</p> <p>3 Administrative Services Subcontract,</p> <p>4 Bates numbered BQHC 01056 through BQHC</p> <p>5 01064, was marked for identification.)</p> <p>6 BY MR. TZANETOPOULOS:</p> <p>7 <b>Q. Mr. Hoffman, I'm showing you two</b></p> <p>8 <b>documents that the court reporter has marked</b></p> <p>9 <b>as Hoffman Exhibits Nos. 5 and 6.</b></p> <p>10 <b>Exhibit No. 5 is titled,</b></p> <p>11 <b>"Administrative Services Agreement By and</b></p> <p>12 <b>Between Caritas Health Care Planning, Inc.</b></p> <p>13 <b>and WHMC Properties, Inc. Dated as of August</b></p> <p>14 <b>21, 2006." It begins with Bates numbers BQHC</b></p> <p>15 <b>00306 and concludes with BQHC 00328.</b></p> <p>16 <b>Exhibit No. 6 is titled,</b></p> <p>17 <b>"Administrative Services Subcontract," also</b></p> <p>18 <b>dated August 21, 2006. It's stamped BQHC</b></p> <p>19 <b>01056 through 01064.</b></p> <p>20 <b>I'll let you take a look at these</b></p> <p>21 <b>to refresh yourself. When you're ready, let</b></p> <p>22 <b>me know.</b></p> <p>23 A. (Document review.)</p> <p>24 Okay.</p> <p>25 <b>Q. If I can direct your attention to</b></p>



<p>46</p> <p>1 Confidential - D. Hoffman</p> <p>2 Exhibit No. 5, second to the last page, which</p> <p>3 is BQHC 00327 --</p> <p>4 A. Yes.</p> <p>5 Q. -- it lists what it says are</p> <p>6 "Personnel provided by contractor will</p> <p>7 include, among others, the following</p> <p>8 individuals." You're included there.</p> <p>9 A. Uh-huh.</p> <p>10 MR. LOUGHLIN: Can I just ask a</p> <p>11 question? Do we have two copies of</p> <p>12 this? It seems awfully thick.</p> <p>13 MR. TZANETOPOULOS: Let's go off</p> <p>14 the record.</p> <p>15 (Discussion off the record.)</p> <p>16 BY MR. TZANETOPOULOS:</p> <p>17 Q. Let's talk about who these other</p> <p>18 people are.</p> <p>19 Who is Mr. Gio? What was his</p> <p>20 position at the hospital or hospital</p> <p>21 entities?</p> <p>22 A. In August of 2006?</p> <p>23 Q. Yes, sir.</p> <p>24 A. He is the president and CEO of</p> <p>25 Wyckoff Heights Medical Center.</p>	<p>48</p> <p>1 Confidential - D. Hoffman</p> <p>2 A. I don't recognize his signature; I</p> <p>3 recognize that it says Harold McDonald and</p> <p>4 there is a signature.</p> <p>5 Q. Do you know Mr. McNeil's signature?</p> <p>6 A. Again, I don't recognize his</p> <p>7 signature but I recognize there is a</p> <p>8 signature and his name appears.</p> <p>9 Q. At this period of time, August</p> <p>10 2006, was Mr. McNeil, in fact, the treasurer</p> <p>11 of WHMC Properties?</p> <p>12 A. Yes.</p> <p>13 Q. And at this time was Mr. McDonald,</p> <p>14 in fact, the executive vice president and</p> <p>15 chief operating officer of Caritas Health</p> <p>16 Care Planning?</p> <p>17 A. Yes.</p> <p>18 Q. Was the general nature of this</p> <p>19 transaction, as you understood it, that WHMC</p> <p>20 Properties was contracting with Caritas to</p> <p>21 provide the administrative services outlined</p> <p>22 in the agreement?</p> <p>23 MR. LOUGHLIN: This is Exhibit 5?</p> <p>24 MR. TZANETOPOULOS: Yes.</p> <p>25 THE WITNESS: The document speaks</p>
<p>47</p> <p>1 Confidential - D. Hoffman</p> <p>2 Q. And Mr. McDonald?</p> <p>3 A. Was the chief operating officer of</p> <p>4 Wyckoff Heights Medical Center.</p> <p>5 Q. Mr. McNeil?</p> <p>6 A. Was the chief financial officer of</p> <p>7 Wyckoff Heights Medical Center.</p> <p>8 Q. And we know who you are.</p> <p>9 Did you work on this administrative</p> <p>10 services agreement?</p> <p>11 A. I didn't prepare the agreement.</p> <p>12 Proskauer Rose prepared all of these</p> <p>13 agreements. But I was involved and consulted</p> <p>14 about the terms of the agreements.</p> <p>15 THE WITNESS: Off the record.</p> <p>16 (Discussion off the record.)</p> <p>17 BY MR. TZANETOPOULOS:</p> <p>18 Q. If I can direct your attention to</p> <p>19 the page Bates numbered BQHC 00326.</p> <p>20 MR. LOUGHLIN: In Exhibit 5?</p> <p>21 MR. TZANETOPOULOS: Exhibit No. 5.</p> <p>22 THE WITNESS: Yeah.</p> <p>23 BY MR. TZANETOPOULOS:</p> <p>24 Q. Do you recognize Mr. McDonald's</p> <p>25 signature there?</p>	<p>49</p> <p>1 Confidential - D. Hoffman</p> <p>2 for itself. I'm not going to</p> <p>3 characterize the document.</p> <p>4 BY MR. TZANETOPOULOS:</p> <p>5 Q. I'm looking for your understanding,</p> <p>6 sir.</p> <p>7 A. I don't remember the agreement, so</p> <p>8 I don't have an understanding.</p> <p>9 Q. And the administrative services</p> <p>10 subcontract in Exhibit No. 6, were you also</p> <p>11 at the time generally familiar with -- or did</p> <p>12 you perform work with respect to that</p> <p>13 transaction?</p> <p>14 A. I was consulted regarding all of</p> <p>15 these transactions which related to Wyckoff,</p> <p>16 BQHC, and Caritas Health Care Planning, Inc.</p> <p>17 providing services to St. Vincent's Catholic</p> <p>18 Medical Center to provide intramanagement of</p> <p>19 St. John's and Mary Immaculate Hospitals</p> <p>20 pending the completion of the asset purchase</p> <p>21 agreement and approval of licensure of</p> <p>22 Caritas Health Care Planning, Inc. to become</p> <p>23 an Article 28 licensed operator of two</p> <p>24 hospitals in Queens County, New York.</p> <p>25 Q. All right. And I appreciate that,</p>



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<p style="text-align: right;">50</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>sir, because I think it gets us where we want</b></p> <p>3 <b>to go.</b></p> <p>4 <b>Is it, in fact, the case that these</b></p> <p>5 <b>two contracts are related to the provision of</b></p> <p>6 <b>services to Caritas before the closing of BQH</b></p> <p>7 <b>or of Caritas's purchase of the hospitals?</b></p> <p>8 <b>A. No.</b></p> <p>9 <b>Q. All right. Had Caritas purchased</b></p> <p>10 <b>the hospitals yet as of August 2006?</b></p> <p>11 <b>A. No.</b></p> <p>12 <b>THE WITNESS: Could you read that</b></p> <p>13 <b>back.</b></p> <p>14 <b>(The requested portion of the</b></p> <p>15 <b>record was read back.)</b></p> <p>16 <b>BY MR. TZANETOPOULOS:</b></p> <p>17 <b>Q. Let me ask a different question.</b></p> <p>18 <b>Were these agreements, Exhibit Nos.</b></p> <p>19 <b>5 and 6, intended to address Wyckoff's</b></p> <p>20 <b>provision of services to Caritas after</b></p> <p>21 <b>January 1, 2007?</b></p> <p>22 <b>A. No.</b></p> <p>23 <b>Q. Are there written agreements that</b></p> <p>24 <b>address Wyckoff provision of services to</b></p> <p>25 <b>Caritas from January 1, 2007, and after?</b></p>	<p style="text-align: right;">52</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>staff, the medical education department,</b></p> <p>3 <b>Claire Mullally with regard to the Caritas</b></p> <p>4 <b>transaction. And I'm sure lots of other</b></p> <p>5 <b>people.</b></p> <p>6 <b>Q. If there were -- Strike that.</b></p> <p>7 <b>If written agreements governing the</b></p> <p>8 <b>provision of service between or by Wyckoff to</b></p> <p>9 <b>Caritas for the period January 1, 2007, and</b></p> <p>10 <b>after, in fact, exist, would your searches</b></p> <p>11 <b>have found those contracts?</b></p> <p>12 <b>A. Objection to form.</b></p> <p>13 <b>I can't answer the question the way</b></p> <p>14 <b>you asked it.</b></p> <p>15 <b>Q. Do you think that if the defendants</b></p> <p>16 <b>had such contracts that we also would have</b></p> <p>17 <b>them, and the fact that we don't have them</b></p> <p>18 <b>suggests that you don't?</b></p> <p>19 <b>A. Because I don't know what was done</b></p> <p>20 <b>with contracts during what we now refer to as</b></p> <p>21 <b>my sabbatical, from the end of December 2007</b></p> <p>22 <b>to the beginning of October 2008, I can't</b></p> <p>23 <b>speak to where any contracts would</b></p> <p>24 <b>necessarily be. You can ask Mr. Singleton</b></p> <p>25 <b>that question.</b></p>
<p style="text-align: right;">51</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>A. I don't recall.</b></p> <p>3 <b>Q. If they existed would they be in</b></p> <p>4 <b>the contract repository that you testified</b></p> <p>5 <b>about earlier?</b></p> <p>6 <b>A. Probably not, but I can't be</b></p> <p>7 <b>certain.</b></p> <p>8 <b>Q. If such contracts existed, where</b></p> <p>9 <b>would they be maintained?</b></p> <p>10 <b>A. In the asset purchase agreement and</b></p> <p>11 <b>related documents as prepared by Proskauer</b></p> <p>12 <b>Rose.</b></p> <p>13 <b>Q. In order to respond to the</b></p> <p>14 <b>plaintiff's discovery request in this case,</b></p> <p>15 <b>were you the person who performed the</b></p> <p>16 <b>document search on behalf of the defendants?</b></p> <p>17 <b>A. Was I the sole person?</b></p> <p>18 <b>Q. Were you one of them?</b></p> <p>19 <b>A. I did engage in searches for</b></p> <p>20 <b>documents related to this lawsuit, yes.</b></p> <p>21 <b>Q. Who else did?</b></p> <p>22 <b>A. I couldn't answer comprehensively.</b></p> <p>23 <b>Q. Of whom are you aware having</b></p> <p>24 <b>participated in the search?</b></p> <p>25 <b>A. Our administrative staff, our IT</b></p>	<p style="text-align: right;">53</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Q. I apologize if I have asked it this</b></p> <p>3 <b>way before but just to close it out, let me</b></p> <p>4 <b>do it again. Are you aware of any such</b></p> <p>5 <b>written agreement governing provision of</b></p> <p>6 <b>services by Wyckoff to Caritas from</b></p> <p>7 <b>January 1, 2007, or later?</b></p> <p>8 <b>A. Objection to form.</b></p> <p>9 <b>I recall there being agreements to</b></p> <p>10 <b>which Wyckoff and Caritas were parties. I</b></p> <p>11 <b>don't recall if they were, per se, services</b></p> <p>12 <b>agreements.</b></p> <p>13 <b>Q. During the time that you have</b></p> <p>14 <b>worked as general counsel, who is it that</b></p> <p>15 <b>prepares the minutes for Wyckoff Heights</b></p> <p>16 <b>Medical Center Board of Trustees meetings?</b></p> <p>17 <b>A. There are a number of people</b></p> <p>18 <b>involved in that process.</b></p> <p>19 <b>Q. How does the process work then?</b></p> <p>20 <b>A. Somebody takes notes at the meeting</b></p> <p>21 <b>and then prepares minutes.</b></p> <p>22 <b>Q. As general counsel, is that your</b></p> <p>23 <b>job or is that somebody else's?</b></p> <p>24 <b>A. It is typically somebody else's</b></p> <p>25 <b>job. I take minutes on occasion,</b></p>

<p>54</p> <p>1 Confidential - D. Hoffman</p> <p>2 particularly when the Board meets in</p> <p>3 executive session or when it's an ad hoc or</p> <p>4 emergency meeting.</p> <p>5 Q. And in the ordinary course of</p> <p>6 Wyckoff Heights Medical Center's business,</p> <p>7 once those minutes are prepared by whomever,</p> <p>8 what are the next steps in the process of</p> <p>9 having them approved and maintained at the</p> <p>10 hospital?</p> <p>11 A. They're presented for approval at</p> <p>12 the following meeting, they're signed by the</p> <p>13 secretary to the Board or the assistant</p> <p>14 secretary to the Board and the chairman</p> <p>15 typically, and then they were placed in</p> <p>16 binders. In subsequent years those binders</p> <p>17 were scanned and are maintained in an</p> <p>18 electronic repository.</p> <p>19 Q. Is that also the process for</p> <p>20 Brooklyn-Queens Health Care's Board of</p> <p>21 Trustees meetings' minutes?</p> <p>22 A. Objection to form.</p> <p>23 That's generally the process for</p> <p>24 maintaining minutes in any not-for-profit</p> <p>25 corporation. Other than that, I can't</p>	<p>56</p> <p>1 Confidential - D. Hoffman</p> <p>2 all without looking at those bylaws?</p> <p>3 A. It is my custom and practice to</p> <p>4 refer to the source document when making</p> <p>5 representations under oath.</p> <p>6 Q. Do you have any understanding at</p> <p>7 all, as you sit here today, about the powers</p> <p>8 and purpose of the Executive Committee that</p> <p>9 you can describe without looking at the</p> <p>10 bylaws?</p> <p>11 A. Yes.</p> <p>12 Q. What is that understanding?</p> <p>13 A. It is the Executive Committee of</p> <p>14 the Board of Trustees which has the authority</p> <p>15 to act on behalf of the corporation and the</p> <p>16 Board at times when the Board is not able to</p> <p>17 meet.</p> <p>18 Q. When the Executive Committee meets,</p> <p>19 are minutes kept of those meetings?</p> <p>20 A. Yes.</p> <p>21 Q. In connection with this lawsuit,</p> <p>22 did the defendant search for minutes of those</p> <p>23 Executive Committee meetings?</p> <p>24 A. Wyckoff Heights Medical Center</p> <p>25 searched for all materials that were properly</p>
<p>55</p> <p>1 Confidential - D. Hoffman</p> <p>2 answer.</p> <p>3 Q. There are references in some of the</p> <p>4 Board of Trustees minutes to Executive</p> <p>5 Committee meetings.</p> <p>6 What is the Executive Committee?</p> <p>7 MR. LOUGHLIN: Which entity?</p> <p>8 MR. TZANETOPOULOS: Wyckoff.</p> <p>9 THE WITNESS: The Executive</p> <p>10 Committee is a standing committee of the</p> <p>11 Board. The composition of which is</p> <p>12 provided for in the bylaws.</p> <p>13 BY MR. TZANETOPOULOS:</p> <p>14 Q. Does it have -- Or what powers or</p> <p>15 purpose does the Executive Committee have?</p> <p>16 A. The powers and purpose of the</p> <p>17 Executive Committee of Wyckoff Heights</p> <p>18 Medical Center are set forth in the corporate</p> <p>19 bylaws.</p> <p>20 Q. In general, what do you understand</p> <p>21 them to be?</p> <p>22 A. In general, I understand them to be</p> <p>23 the powers and responsibilities set forth in</p> <p>24 the bylaws.</p> <p>25 Q. Are you able to describe them at</p>	<p>57</p> <p>1 Confidential - D. Hoffman</p> <p>2 the subject of the demand for production, and</p> <p>3 produced documents which were identified,</p> <p>4 which were responsive to those demands.</p> <p>5 Q. Are the Executive Committee meeting</p> <p>6 minutes -- Strike that.</p> <p>7 Where are the Executive Committee</p> <p>8 meeting minutes kept?</p> <p>9 A. They are typically maintained by</p> <p>10 the assistant secretary to the Board, except</p> <p>11 under extraordinary circumstances.</p> <p>12 Q. Who is that?</p> <p>13 A. Who's what? What was the question?</p> <p>14 Q. Who is that person?</p> <p>15 A. It was, up until recently, Pat</p> <p>16 Millspaugh. As you are, no doubt, aware</p> <p>17 having reviewed all of these minutes.</p> <p>18 Q. Are the Executive Committee meeting</p> <p>19 minutes kept in the same binders -- I'm</p> <p>20 sorry -- Are they in the same binders as the</p> <p>21 Board minutes?</p> <p>22 A. I don't know.</p> <p>23 Q. Was it Ms. Millspaugh who keeps or</p> <p>24 kept the minutes themselves?</p> <p>25 A. When they were maintained in</p>

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<p style="text-align: right;">58</p> <p>1 Confidential - D. Hoffman</p> <p>2 physical form, they were maintained in</p> <p>3 physical form in her office.</p> <p>4 (Hoffman Exhibit No. 7, October 5,</p> <p>5 2006, Wyckoff Heights Medical Center</p> <p>6 Board of Trustees Meeting Minutes, Bates</p> <p>7 numbered BQHC 03769 through BQHC 3774,</p> <p>8 was marked for identification.)</p> <p>9 BY MR. TZANETOPOULOS:</p> <p>10 Q. Mr. Hoffman, the court reporter has</p> <p>11 handed you a document that's been marked as</p> <p>12 Hoffman Deposition Exhibit No. 7. It's an</p> <p>13 October 5th, 2006, set of Board of Trustees</p> <p>14 meeting minutes from the Wyckoff Heights</p> <p>15 Medical Center Board of Trustees, stamped</p> <p>16 beginning BQHC 03769 through 03774.</p> <p>17 This set of minutes shows that you</p> <p>18 were at this meeting, correct, on the front</p> <p>19 page?</p> <p>20 A. That's what it says.</p> <p>21 Q. Do you have any independent</p> <p>22 recollection of this meeting?</p> <p>23 A. Yes.</p> <p>24 Q. If I can direct your attention,</p> <p>25 please, to Page 3 of the minutes, it's been</p>	<p style="text-align: right;">60</p> <p>1 Confidential - D. Hoffman</p> <p>2 A. Objection to form.</p> <p>3 Q. As you understood -- Let me start</p> <p>4 again.</p> <p>5 The paragraph here discussions</p> <p>6 compensation for corporate officers of</p> <p>7 Brooklyn-Queens Health Care.</p> <p>8 To your understanding, who was to</p> <p>9 pay that compensation?</p> <p>10 A. I don't recall.</p> <p>11 Q. Was the plan that Brooklyn-Queens</p> <p>12 Health Care would, in fact, have assets that</p> <p>13 would permit it to pay corporate officers?</p> <p>14 A. Objection. Asked and answered.</p> <p>15 Q. One more time, please.</p> <p>16 A. Objection. Asked and answered.</p> <p>17 Q. I'd like the answer, please. Do</p> <p>18 you know what the plan was?</p> <p>19 A. Objection to form.</p> <p>20 What the plan was for what.</p> <p>21 Q. Do you understand the question?</p> <p>22 A. No.</p> <p>23 Q. All right. At this time do you</p> <p>24 have any understanding of whether the plan</p> <p>25 being discussed here anticipated that</p>
<p style="text-align: right;">59</p> <p>1 Confidential - D. Hoffman</p> <p>2 marked BQHC 03771. There are some numbered</p> <p>3 paragraphs. In particular, I'd like to call</p> <p>4 your attention to the numbered Paragraphs 2</p> <p>5 and 3 and the sentence below those two</p> <p>6 paragraphs. So if you can take a look and</p> <p>7 then I have some questions.</p> <p>8 A. (Document review.)</p> <p>9 I've read Paragraphs 2 and 3.</p> <p>10 Q. The minutes say that, and I quote,</p> <p>11 Paragraph 2, "Mr. Gio stated that he</p> <p>12 presented a compensation package to the</p> <p>13 committee for approval outlining the</p> <p>14 compensation for corporate officers of</p> <p>15 Brooklyn-Queens Health Care the new</p> <p>16 compensation structure will become effective</p> <p>17 upon closing of the SBCMCS at purchase.</p> <p>18 Mr. Gio stated that the compensation package</p> <p>19 was approved by the Executive Committee."</p> <p>20 What corporate officers at</p> <p>21 Brooklyn-Queens Health Care were approved for</p> <p>22 compensation under this package?</p> <p>23 A. I have no idea.</p> <p>24 Q. Was the plan that Brooklyn-Queens</p> <p>25 Health Care could pay anybody?</p>	<p style="text-align: right;">61</p> <p>1 Confidential - D. Hoffman</p> <p>2 Brooklyn-Queens Health Care would have assets</p> <p>3 to pay corporate officers?</p> <p>4 A. Meaning cash assets?</p> <p>5 Q. Any assets.</p> <p>6 A. As far as I am aware, no one was</p> <p>7 ever paid by barter of physical goods.</p> <p>8 Q. All right. That leaves us with</p> <p>9 cash. So the same question with respect to</p> <p>10 cash.</p> <p>11 A. Brooklyn-Queens Health Care was</p> <p>12 designed and established as the passive</p> <p>13 parent sole corporate member of Wyckoff</p> <p>14 Heights Medical Center and Caritas Health</p> <p>15 Care, Inc. And as such, never had a checking</p> <p>16 account, never has had a checking account,</p> <p>17 and never maintained any cash assets that I</p> <p>18 am aware of.</p> <p>19 Q. Your understanding of the plan</p> <p>20 being discussed here, who was to pay the</p> <p>21 compensation for the corporate officers of</p> <p>22 Brooklyn-Queens Health Care that are</p> <p>23 discussed in these minutes?</p> <p>24 A. I don't recall.</p> <p>25 Q. Were there any entities in the mix</p>

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<p style="text-align: right;">62</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>of the discussions at this time other than</b></p> <p>3 <b>Caritas or Wyckoff who could do so?</b></p> <p>4 A. Objection to form. I can't answer</p> <p>5 the question the way you asked it.</p> <p>6 THE WITNESS: Can we go off the</p> <p>7 record for a second?</p> <p>8 (Discussion off the record.)</p> <p>9 BY MR. TZANETOPOULOS:</p> <p>10 Q. Paragraph 3 says that, and I quote,</p> <p>11 "Mr. Gio advised the Board that a proposal to</p> <p>12 have Caritas assume his employment contract</p> <p>13 for the remaining seven years of his</p> <p>14 contract, except for the agreed compensation</p> <p>15 as outlined in the compensation package, all</p> <p>16 other terms and conditions will remain</p> <p>17 unaltered."</p> <p>18 As you understood it, whose</p> <p>19 decision was it to have Mr. Gio's contract</p> <p>20 assumed by Caritas?</p> <p>21 A. I don't know. I was not a party to</p> <p>22 that discussion, or that meeting, excuse me.</p> <p>23 Q. And the sentence below that states,</p> <p>24 and I quote, "Mr. Gio stated that the</p> <p>25 Executive Committee approved that the</p>	<p style="text-align: right;">64</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Heights Medical Center.</b></p> <p>3 A. Wyckoff Heights Medical Center</p> <p>4 does, in fact, have a department of medical</p> <p>5 education, yes.</p> <p>6 Q. And in general terms, what does</p> <p>7 that department do?</p> <p>8 A. It manages the education of medical</p> <p>9 students and has some responsibility for the</p> <p>10 administration of the residency programs.</p> <p>11 MR. TZANETOPOULOS: Can you read</p> <p>12 his answer back.</p> <p>13 (The requested portion of the</p> <p>14 record was read back.)</p> <p>15 BY MR. TZANETOPOULOS:</p> <p>16 Q. Did Caritas have a separate</p> <p>17 department to make arrangements for medical</p> <p>18 students whose training would take place at</p> <p>19 the Caritas hospitals?</p> <p>20 A. St. John's Hospital and Mary</p> <p>21 Immaculate Hospital had departments of</p> <p>22 medical education. And those departments</p> <p>23 remained operational after Caritas became the</p> <p>24 Article 28 licensed operator of those</p> <p>25 facilities.</p>
<p style="text-align: right;">63</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>remaining seven years of the employment</b></p> <p>3 <b>contract will be assumed by BQHC."</b></p> <p>4 As you understand it, could BQHC</p> <p>5 even assume Mr. Gio's employment contract?</p> <p>6 Let me ask a better question: We would agree</p> <p>7 that BQHC had no money with which it could</p> <p>8 pay Mr. Gio, correct?</p> <p>9 A. Objection. Asked and answered.</p> <p>10 As I have previously testified,</p> <p>11 Brooklyn-Queens Health Care did not have, and</p> <p>12 to date, as far as I'm aware, does not have a</p> <p>13 checking account and has no cash assets. A</p> <p>14 corporation can assume liabilities as a</p> <p>15 matter of corporate law and can take any</p> <p>16 number of steps to fulfill its obligations</p> <p>17 without having a checking account.</p> <p>18 Q. Mr. Hoffman, the documents the</p> <p>19 defendants have produced refer to a</p> <p>20 department of graduate medical education.</p> <p>21 Are you familiar with that</p> <p>22 department?</p> <p>23 A. Department of graduate medical</p> <p>24 education of what entity?</p> <p>25 Q. As far as I can tell, Wyckoff</p>	<p style="text-align: right;">65</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 Q. Did the St. John's and Mary</p> <p>3 Immaculate medical education departments have</p> <p>4 responsibility for making arrangements for</p> <p>5 students of Ross who did clerkships at</p> <p>6 St. John's or Mary Immaculate?</p> <p>7 A. On what date? Prior to or</p> <p>8 following the closing on January 1st, 2007?</p> <p>9 Q. Following. Thank you.</p> <p>10 A. I don't know.</p> <p>11 (Hoffman Exhibit No. 8, e-mail from</p> <p>12 Dr. Thomas Shepherd to Dominick Gio</p> <p>13 dated December 22, 2006, Bates numbered</p> <p>14 ROSS0630 through ROSS0643, was marked</p> <p>15 for identification.)</p> <p>16 BY MR. TZANETOPOULOS:</p> <p>17 Q. Mr. Hoffman, the court reporter has</p> <p>18 provided you with a document that has been</p> <p>19 labeled Hoffman Deposition Exhibit No. 8.</p> <p>20 A. Uh-huh.</p> <p>21 Q. The top says Virginia Smith but it</p> <p>22 looks like an e-mail from Dr. Thomas Shepherd</p> <p>23 to Dominick Gio dated December 22, 2006. It</p> <p>24 begins with Bates stamp ROSS0630 and</p> <p>25 concludes with ROSS0643.</p>

<p>66</p> <p>1 Confidential - D. Hoffman</p> <p>2 In the December of 2006 time frame,</p> <p>3 was the draft of the contract that's attached</p> <p>4 to the e-mail provided to you by anybody?</p> <p>5 A. On December 22nd, 2006?</p> <p>6 Q. Any time in that December or</p> <p>7 January 2006 -- Let's just stick with the</p> <p>8 December 2006 time frame.</p> <p>9 A. I can't answer the question the way</p> <p>10 you asked it.</p> <p>11 Q. Do you know if anybody gave it to</p> <p>12 you?</p> <p>13 A. Parts of this document look vaguely</p> <p>14 familiar as being a draft of a document that</p> <p>15 was ultimately signed. I didn't have a role</p> <p>16 in the negotiation of this agreement.</p> <p>17 Q. Did you comment on any of the</p> <p>18 drafts that went back and forth between the</p> <p>19 parties?</p> <p>20 A. I have no idea.</p> <p>21 (Hoffman Exhibit No. 9, Affidavit</p> <p>22 of John Lavan, was marked for</p> <p>23 identification.)</p> <p>24 BY MR. TZANETOPOULOS:</p> <p>25 Q. Mr. Hoffman, the court reporter has</p>	<p>68</p> <p>1 Confidential - D. Hoffman</p> <p>2 that note?</p> <p>3 A. Yes.</p> <p>4 Q. Did you work on those agreements in</p> <p>5 that December -- In that 2006, 2007 time</p> <p>6 frame did you work on those agreements?</p> <p>7 A. They were prepared and negotiated</p> <p>8 by the attorneys at Proskauer Rose. But I</p> <p>9 was part of the consultation and discussion.</p> <p>10 Q. Does the footnote in Footnote 13</p> <p>11 comport with your general</p> <p>12 understanding -- Strike that. Let me try</p> <p>13 again.</p> <p>14 Is the statement made in Footnote</p> <p>15 13 accurate, given your understanding of</p> <p>16 those agreements?</p> <p>17 A. That's my general recollection.</p> <p>18 HFG insisted that they have first right of</p> <p>19 all money from Caritas, and that any loans</p> <p>20 made by Wyckoff to Caritas would not be</p> <p>21 repaid until HFG had gotten all of its money.</p> <p>22 It being a commercial lender, and Wyckoff</p> <p>23 being a not-for-profit corporation trying to</p> <p>24 rescue two struggling hospitals in Queens.</p> <p>25 Q. I have a number of employment</p>
<p>67</p> <p>1 Confidential - D. Hoffman</p> <p>2 handed to you a document that has been</p> <p>3 labeled Hoffman Exhibit No. 9 titled,</p> <p>4 "Affidavit of John Lavan, the Chief</p> <p>5 Restructuring Officer of Caritas, in support</p> <p>6 of Chapter 11 Petitions and First Day</p> <p>7 Pleadings."</p> <p>8 Just to ask an overall question:</p> <p>9 Did you work on the project of taking Caritas</p> <p>10 into bankruptcy?</p> <p>11 A. No.</p> <p>12 Q. Let me, then, just refer you to one</p> <p>13 other thing and see if you know about it or</p> <p>14 if you don't. If you would, please, turn to</p> <p>15 Page 12 of Mr. Lavan's affidavit.</p> <p>16 THE WITNESS: Off the record.</p> <p>17 (Discussion off the record.)</p> <p>18 THE WITNESS: Page 12?</p> <p>19 BY MR. TZANETOPOULOS:</p> <p>20 Q. Page 12, please. And in particular</p> <p>21 Footnote 13. Take a minute.</p> <p>22 A. I have read Footnote No. 13.</p> <p>23 Q. Are you generally familiar with the</p> <p>24 subordination agreement or subordination</p> <p>25 agreement and loan documents discussed in</p>	<p>69</p> <p>1 Confidential - D. Hoffman</p> <p>2 agreements between Mr. Donnelley and</p> <p>3 Mr. McDonald, and maybe a couple of others, I</p> <p>4 can't remember till I look, that were entered</p> <p>5 into in 2006 and 2007. Did you work on those</p> <p>6 employment agreements or was that the folks</p> <p>7 at Proskauer?</p> <p>8 A. It would be impossible for me to</p> <p>9 answer that question without having a</p> <p>10 document in front of me.</p> <p>11 Q. Okay.</p> <p>12 (Hoffman Exhibit No. 10, e-mails</p> <p>13 and Caritas Health Care Organization</p> <p>14 Period and Start-Up document, Bates</p> <p>15 numbered BQHC 07617 through BQHC 07623,</p> <p>16 was marked for identification.)</p> <p>17 BY MR. TZANETOPOULOS:</p> <p>18 Q. Mr. Hoffman, let me show you a</p> <p>19 document that the court reporter has marked</p> <p>20 as Hoffman Exhibit No. 10. It's Bates</p> <p>21 numbered BQHC 07617 through 07623. It's an</p> <p>22 e-mail string of a number of e-mails dated</p> <p>23 February 22, 2007. And then behind the</p> <p>24 e-mails, let's just go through the exhibit.</p> <p>25 Just to orient you to where I'm</p>



<p>70</p> <p>1 Confidential - D. Hoffman</p> <p>2 going, if you take a look at the last e-mail</p> <p>3 string from a Tracy Raleigh to -- is it</p> <p>4 Wah-chung Hsu? Is that how he says it?</p> <p>5 A. Uh-huh.</p> <p>6 MR. LOUGHLIN: Were these</p> <p>7 documents, in fact, produced stapled</p> <p>8 together?</p> <p>9 MR. TZANETOPOULOS: Let's go off</p> <p>10 the record.</p> <p>11 (Discussion off the record.)</p> <p>12 BY MR. TZANETOPOULOS:</p> <p>13 Q. We've had a discussion with</p> <p>14 Mr. Loughlin and Mr. Hoffman and I about</p> <p>15 whether or not the entire Exhibit No. 10 is</p> <p>16 part of the same document or not. Let me</p> <p>17 just ask a couple of questions for the</p> <p>18 record, Mr. Hoffman, and then we can move on</p> <p>19 to other things.</p> <p>20 Do you know one way or the other</p> <p>21 whether these documents were all part of the</p> <p>22 same message or not?</p> <p>23 A. No.</p> <p>24 Q. When you see references to CBO in</p> <p>25 the e-mails and the documents themselves, do</p>	<p>72</p> <p>1 Confidential - D. Hoffman</p> <p>2 BQHC Central Business Office would need to be</p> <p>3 paid."</p> <p>4 Does that comport with your</p> <p>5 understanding of what was anticipated as a</p> <p>6 period of cash shortage?</p> <p>7 A. I have no recollection of</p> <p>8 discussions of a period of cash shortage at</p> <p>9 the time.</p> <p>10 Q. It goes on to say that, "Wyckoff</p> <p>11 had long standing relationships with two</p> <p>12 international medical schools that had</p> <p>13 expressed interest in investing in the</p> <p>14 Caritas project. These pre-closing cash</p> <p>15 needs were expected to be funded and were</p> <p>16 funded with prepaid Caritas clerkship fees."</p> <p>17 Does that comport with your</p> <p>18 understanding of how these cash needs were</p> <p>19 funded?</p> <p>20 A. I can't answer that question. I'm</p> <p>21 reading the same sentence you're reading, and</p> <p>22 the words suggest that that's what the author</p> <p>23 of this document believed.</p> <p>24 Q. And my question is: Do you have</p> <p>25 any recollection of that being what was</p>
<p>71</p> <p>1 Confidential - D. Hoffman</p> <p>2 you think that that means the Brooklyn-Queens</p> <p>3 Health Care system Central Business Office?</p> <p>4 A. We referred to the Wyckoff-Caritas</p> <p>5 joint venture Central Business Office as</p> <p>6 being the CBO. Other than that, I can't</p> <p>7 answer your question.</p> <p>8 Q. Let me direct your attention to the</p> <p>9 third page of the exhibit, which is BQHC</p> <p>10 07619, entitled, "Caritas Health Care</p> <p>11 Organization and Start-Up." In particular,</p> <p>12 let me direct your attention to paragraph</p> <p>13 following "Anticipated potential periods of</p> <p>14 cash shortage."</p> <p>15 Do you see where I am?</p> <p>16 A. No. How far down?</p> <p>17 Q. Counsel has pointed you there.</p> <p>18 A. Yeah.</p> <p>19 Q. And it reads, "Two potential</p> <p>20 periods of cash shortage related to the</p> <p>21 Caritas acquisition were identified early on.</p> <p>22 The first period was anticipated just prior</p> <p>23 to closing as some of the expenses related to</p> <p>24 the installation of the Caritas Meditech</p> <p>25 computer system and the development of the</p>	<p>73</p> <p>1 Confidential - D. Hoffman</p> <p>2 anticipated in late 2006?</p> <p>3 A. No.</p> <p>4 Q. Do you have a recollection it's</p> <p>5 different or you just don't recall?</p> <p>6 A. I don't recall.</p> <p>7 Q. It goes on to say, "Caritas</p> <p>8 received \$3.5 million from the American</p> <p>9 University of the Caribbean on December 1st</p> <p>10 and \$5 million from Ross University on</p> <p>11 December 28th."</p> <p>12 At that time were you aware that</p> <p>13 those sums were coming in from AUC and from</p> <p>14 Ross?</p> <p>15 A. Not those particular sums. But I</p> <p>16 was aware that there were discussions with</p> <p>17 medical schools to whom we provided clerkship</p> <p>18 training for prepayment of those clerkships.</p> <p>19 Q. If you wanted to find out who the</p> <p>20 author of this document was, what would you</p> <p>21 do?</p> <p>22 A. Pass it around to everyone I know</p> <p>23 and ask them if they wrote it.</p> <p>24 Q. Where would you start? Who were</p> <p>25 the most likely candidates in your mind?</p>



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<p style="text-align: right;">74</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. I would start with all the people</p> <p>3 referenced in the e-mails in front of the</p> <p>4 Caritas Health Care organization period and</p> <p>5 Start-Up document.</p> <p>6 MR. TZANETOPOULOS: Do you want to</p> <p>7 take a short lunch?</p> <p>8 (A luncheon recess was taken from</p> <p>9 12:31 p.m. to 1:10 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">76</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 shows that a copy went to you, at least</p> <p>3 Mr. Gio's message. Did you participate at</p> <p>4 all in any work in connection with any of the</p> <p>5 events described in Mr. Gio's e-mail?</p> <p>6 A. Meaning that if . . .</p> <p>7 Q. I know you got a copy but did you</p> <p>8 do anything?</p> <p>9 A. Meaning that if I had anything to</p> <p>10 do with any one of these events I would</p> <p>11 answer yes?</p> <p>12 Q. Correct.</p> <p>13 A. Yes.</p> <p>14 Q. Which ones?</p> <p>15 A. To answer that question I would</p> <p>16 have to go through each and every one of</p> <p>17 them.</p> <p>18 Q. Okay.</p> <p>19 A. (Document review.)</p> <p>20 I was consulted with regard to all</p> <p>21 of the events described in Dominick Gio's</p> <p>22 e-mail dated March 2nd, 2007.</p> <p>23 Q. Let's focus for a moment, if we</p> <p>24 can, on the events discussed at the bottom of</p> <p>25 the second page of the exhibit at our</p>
<p style="text-align: right;">75</p> <p>1 Confidential - D. Hoffman</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:10 p.m.)</p> <p>4 DAVID HOFFMAN,</p> <p>5 resumed and testified as follows:</p> <p>6 (Hoffman Exhibit No. 11, March 2,</p> <p>7 2007, string of e-mails, Bates numbered</p> <p>8 BQHC 06856 through BQHC06860, was marked</p> <p>9 for identification.)</p> <p>10 CONTINUED DIRECT EXAMINATION</p> <p>11 BY MR. TZANETOPOULOS:</p> <p>12 Q. Mr. Hoffman, the court reporter has</p> <p>13 handed you a document marked as Hoffman</p> <p>14 Deposition Exhibit No. 11, a March 2, 2007,</p> <p>15 e-mail -- actually string of 2007 e-mails.</p> <p>16 And it has been stamped with BQHC 06856,</p> <p>17 finishing at 6860.</p> <p>18 When you get a chance, take a</p> <p>19 minute to review it and let me know when</p> <p>20 you're finished and we'll visit a little bit</p> <p>21 about it.</p> <p>22 A. (Document review.)</p> <p>23 Q. All set?</p> <p>24 A. Always.</p> <p>25 Q. Mr. Hoffman, the e-mail message</p>	<p style="text-align: right;">77</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 January 11, 2007 Wyckoff Board of Trustees.</p> <p>3 Do you see where I am?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Mr. Gio goes on to write in that</p> <p>6 paragraph, "Equally disturbing, he" -- Let's</p> <p>7 start with the whole thing.</p> <p>8 A. "He" refers to Hal McNeil, the</p> <p>9 chief financial officer.</p> <p>10 Q. "Mr. McNeil, in the days following</p> <p>11 the Caritas closing, had transferred funds</p> <p>12 from Caritas Health Care, Inc. to Wyckoff</p> <p>13 Heights Medical Center. This was done in</p> <p>14 amounts that exceeded the dollar totals</p> <p>15 necessary to repay the authorized loan made</p> <p>16 to Caritas by Wyckoff pursuant to order</p> <p>17 resolution."</p> <p>18 What investigations were done --</p> <p>19 Let's go back a step.</p> <p>20 As you understand it, how did</p> <p>21 Mr. McNeil transfer funds from Caritas to</p> <p>22 Wyckoff?</p> <p>23 A. I don't know.</p> <p>24 Q. Is the process for -- Strike that.</p> <p>25 Start all over again.</p>

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1 Confidential - D. Hoffman  
2 In December of 2006 and January  
3 of 2007, was there a means of making  
4 intercompany transfers between Wyckoff and  
5 Caritas other than writing a check or going  
6 to the bank and making a wire?  
7 A. I don't know.  
8 Q. Who would know that?  
9 A. I imagine Hal McNeil.  
10 Q. Anybody presently at Wyckoff that  
11 you can think of?  
12 A. Not that I can think of. And there  
13 may be people in the finance office now who  
14 were there then. Whether they would know  
15 anything about this, I don't have a clue.  
16 Q. Do you know, in fact, how these  
17 particular funds were transferred?  
18 A. Nope, I don't.  
19 Q. Do you know what investigation was  
20 done concerning who might have known about  
21 the transfers other than Mr. McNeil?  
22 A. Prior to this report being made?  
23 Q. Yes, sir.  
24 A. According to Mr. Gio, nobody did.  
25 Q. Right. And what I'm asking is: Do

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1 Confidential - D. Hoffman  
2 you know what investigation was done to  
3 determine that?  
4 A. I can't recall particularly with  
5 reference to investigations completed as of  
6 March 2nd, 2007. But I do know that there  
7 was an initial internal review, there was  
8 then a retention of FTI Cambio to do a  
9 financial review, there was then a review  
10 done by Dewitt Consulting, and then there was  
11 the retention of FTI Cambio to serve as  
12 restructuring officer. That's not  
13 necessarily an exhaustive list, but I know at  
14 least those reviews occurred.  
15 Q. So one of the jobs that FTI was  
16 given when it came to Wyckoff was to make a  
17 review of these transfers, and I suppose,  
18 other things?  
19 A. Excuse me?  
20 Q. Let's just start with that. Was  
21 one of the tasks that FTI was given to look  
22 into these transfers?  
23 A. Sitting here today, I don't  
24 specifically remember what the terms of their  
25 retention were. But clearly they were

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1 Confidential - D. Hoffman  
2 retained to evaluate the internal controls of  
3 the finance departments of Wyckoff and  
4 Caritas.  
5 (Hoffman Exhibit No. 12, Caritas  
6 Health Care Inc. Weekly Cash  
7 Projections, was marked for  
8 identification.)  
9 BY MR. TZANETOPOULOS:  
10 Q. Mr. Hoffman, the court reporter has  
11 given you a document that's been labelled  
12 Hoffman Exhibit No. 12. It says it is a  
13 Caritas Health Care, Inc. Weekly Cash  
14 Projections. It's a five-page exhibit. It  
15 doesn't have Bates numbers.  
16 If I recall correctly, there was a  
17 stretch there where the defendant's  
18 production of some spreadsheets came  
19 separately and not Bates stamped. I believe  
20 that that's where this comes from.  
21 Are you familiar with this type of  
22 document?  
23 A. Only in the most general sense.  
24 Q. Let me direct your attention and  
25 see if you're the right person to talk to

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1 Confidential - D. Hoffman  
2 about this topic or not.  
3 Towards the middle of the first  
4 page under "cash disbursements" there's a  
5 line, "payments to affiliates." And then  
6 below that line another that says, "Wyckoff  
7 Heights Medical Center." And if you travel  
8 that row there's some transfers.  
9 Do you know whether the transfers  
10 shown on these cash projections are the  
11 transfers of funds referred to in Mr. Gio's  
12 e-mail to which you just referred? Is that  
13 the money that Mr. McNeil transferred over?  
14 A. This document is a projection so it  
15 would seem not to indicate that it is a  
16 historical record. But I have no independent  
17 recollection or knowledge of these dollar  
18 amounts or whether they correspond to  
19 anything referred to in Dominick Gio's March  
20 2nd, 2007, e-mail previously marked as  
21 Hoffman No. 11.  
22 Q. Do you think that this is a  
23 forward-looking document, then, that reflects  
24 plans for cash projections?  
25 A. I'm just reading the heading:

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<p style="text-align: right;">82</p> <p>1 Confidential - D. Hoffman</p> <p>2 "Caritas Health Care, Inc. Weekly Cash</p> <p>3 Projections."</p> <p>4 Q. Uh-huh.</p> <p>5 Do you know who prepared these?</p> <p>6 A. Nope.</p> <p>7 Q. Do you know for what purpose they</p> <p>8 were prepared?</p> <p>9 A. I think the document speaks for</p> <p>10 itself.</p> <p>11 Q. My question is: Do you know for</p> <p>12 what purpose these projections were prepared?</p> <p>13 A. Objection to form.</p> <p>14 I can only say that this is a cash</p> <p>15 flow projection, which is a routine business</p> <p>16 management tool.</p> <p>17 Q. What were -- Let me start over</p> <p>18 again.</p> <p>19 In December 2006, for what purposes</p> <p>20 did Caritas Health Care make weekly cash</p> <p>21 projections such as are shown in Hoffman</p> <p>22 Exhibit No. 12?</p> <p>23 A. I couldn't give you an exhaustive</p> <p>24 answer. But clearly, two purposes for which</p> <p>25 cash flow projections were prepared was to</p>	<p style="text-align: right;">84</p> <p>1 Confidential - D. Hoffman</p> <p>2 was marked for identification.)</p> <p>3 BY MR. TZANETOPOULOS:</p> <p>4 Q. Mr. Hoffman, the court reporter has</p> <p>5 handed you a document she's marked as Hoffman</p> <p>6 Deposition Exhibit No. 13. It's titled,</p> <p>7 "Wyckoff Heights Medical Center Board of</p> <p>8 Trustees President's Letter June 7, 2007."</p> <p>9 It's been marked with Bates numbers BQHC</p> <p>10 54890 through 54900.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Were letters from -- I take it at</p> <p>13 this time Mr. Gio was president and CEO of</p> <p>14 Wyckoff?</p> <p>15 A. That is what is indicated by the</p> <p>16 signature line of the document, yes.</p> <p>17 Q. Did you get, in the 2007 time frame</p> <p>18 before your sabbatical, the Board packages in</p> <p>19 advance of Wyckoff Heights Medical Center</p> <p>20 Board meetings?</p> <p>21 A. Generally not. I reviewed</p> <p>22 materials that were to be distributed to the</p> <p>23 Board, but I didn't get the actual book.</p> <p>24 Q. From your experience reviewing that</p> <p>25 material and being at the Board meetings, was</p>
<p style="text-align: right;">83</p> <p>1 Confidential - D. Hoffman</p> <p>2 anticipate what cash would be available to</p> <p>3 meet Caritas's operating needs and to report</p> <p>4 to the commercial lender, HFG, and to the</p> <p>5 State of New York regarding Caritas's cash</p> <p>6 flow.</p> <p>7 Q. During the Board meetings that you</p> <p>8 attended, were Caritas Health projections</p> <p>9 shared with the Caritas Board on a regular</p> <p>10 basis?</p> <p>11 A. The Board of Caritas received</p> <p>12 financial reports from the chief financial</p> <p>13 officer. I don't recall whether at any given</p> <p>14 point in time cash flow projections were part</p> <p>15 of those reports.</p> <p>16 Q. How about for the Wyckoff Board</p> <p>17 meetings that you have attended, are cash</p> <p>18 projection reports regularly made at those</p> <p>19 Board meetings?</p> <p>20 A. I don't recall off the top of my</p> <p>21 head.</p> <p>22 (Hoffman Exhibit No. 13, Wyckoff</p> <p>23 Heights Medical Center Board of Trustees</p> <p>24 President's Letter June 7, 2007, Bates</p> <p>25 numbered BQHC 54890 through BQHC 54900,</p>	<p style="text-align: right;">85</p> <p>1 Confidential - D. Hoffman</p> <p>2 it Mr. Gio's regular practice to submit a</p> <p>3 president's letter in advance of Board</p> <p>4 meetings?</p> <p>5 A. At least quarterly, yes. Not</p> <p>6 necessarily at every meeting.</p> <p>7 Q. Let me -- One last question. At</p> <p>8 least as you understand it, is Exhibit No. 13</p> <p>9 one such letter?</p> <p>10 A. The document speaks for itself.</p> <p>11 It's a Wyckoff Heights Medical Center Board</p> <p>12 of Trustees President's Letter dated</p> <p>13 June 7th, 2007.</p> <p>14 Q. Looking at this, do you think it</p> <p>15 was submitted to the Board by Mr. Gio?</p> <p>16 A. The June meeting is the annual</p> <p>17 meeting of the hospital, so I would imagine</p> <p>18 that it would have been, yes.</p> <p>19 Q. Let me direct your attention, if I</p> <p>20 may, to the page of Exhibit No. 13 stamped</p> <p>21 with Bates number BQHC 54897. And in</p> <p>22 particular, to the section at the top of the</p> <p>23 page titled "Undergraduate Medical</p> <p>24 Education."</p> <p>25 Mr. Gio writes, about midway down</p>

<p>86</p> <p>1 Confidential - D. Hoffman</p> <p>2 through that section, and I quote, "Payment</p> <p>3 for clerkships was secured from Ross</p> <p>4 University and American University of the</p> <p>5 Caribbean in the amount of \$8.5 million."</p> <p>6 To your understanding, is the Ross</p> <p>7 component of that the money that was paid</p> <p>8 under the affiliation agreement that we have</p> <p>9 marked earlier as Hoffman Exhibit No. 2?</p> <p>10 A. I don't know.</p> <p>11 Q. Going down a little bit in that</p> <p>12 same paragraph, Mr. Gio writes, "All</p> <p>13 affiliation agreements have been reviewed and</p> <p>14 approved by the New York State Education</p> <p>15 Department."</p> <p>16 What is the process for getting</p> <p>17 State approval for such affiliation</p> <p>18 agreements?</p> <p>19 A. I don't recall ever having a direct</p> <p>20 role in submitting them to the New York State</p> <p>21 Education Department for approval. But based</p> <p>22 on my general dealings with the New York</p> <p>23 State Education Department, it need not be</p> <p>24 any more complicated than supplying them with</p> <p>25 a copy of the agreement and getting a letter</p>	<p>88</p> <p>1 Confidential - D. Hoffman</p> <p>2 A. Yes.</p> <p>3 Q. Did you play a role in negotiating</p> <p>4 the deal with FTI that's in this contract?</p> <p>5 A. In part, yes.</p> <p>6 Q. Who else did?</p> <p>7 A. Rick Zall from Proskauer Rose and</p> <p>8 other attorneys from his firm.</p> <p>9 Q. Were there any nonlawyer people</p> <p>10 from the hospitals involved in the</p> <p>11 negotiations? I was going to say business</p> <p>12 people, but you're a hospital.</p> <p>13 A. I think to some extent or another,</p> <p>14 everyone would have been involved in Wyckoff</p> <p>15 entering into this agreement. Everyone in</p> <p>16 the administrative office.</p> <p>17 Q. Who at FTI did you negotiate with?</p> <p>18 A. Tom Singelton, obviously. And</p> <p>19 there was a lawyer who I was in contact with</p> <p>20 by phone, and I don't recall if he was in</p> <p>21 Tennessee or in some other FTI Cambio</p> <p>22 location, and I can't recall his name.</p> <p>23 Q. Fair enough.</p> <p>24 Let me direct your attention, if I</p> <p>25 may, to Page 11 of the agreement. That's the</p>
<p>87</p> <p>1 Confidential - D. Hoffman</p> <p>2 back saying that it's approved.</p> <p>3 Q. At Wyckoff, who was responsible for</p> <p>4 making those submissions at this period of</p> <p>5 time?</p> <p>6 A. I'm not certain. But I would</p> <p>7 imagine it would be Julius Romero.</p> <p>8 (Hoffman Exhibit No. 14,</p> <p>9 Administrative Services Agreement, Bates</p> <p>10 numbered BQHC 004889 through BQHC 00511,</p> <p>11 was marked for identification.)</p> <p>12 BY MR. TZANETOPOULOS:</p> <p>13 Q. Mr. Hoffman, the court reporter has</p> <p>14 handed to you a document that she has marked</p> <p>15 as Hoffman Exhibit No. 14 entitled</p> <p>16 "Administrative Services Agreement." It</p> <p>17 looks to be one between BQHC and Wyckoff and</p> <p>18 Caritas and FTI Cambio. It's been stamped</p> <p>19 BQHC 00489 through 00511.</p> <p>20 Did you work on this agreement?</p> <p>21 A. Yes.</p> <p>22 Q. Is this the contract under which,</p> <p>23 as you described earlier, FTI supplied people</p> <p>24 to be the chief restructuring officer, CFO,</p> <p>25 and provide other consulting services?</p>	<p>89</p> <p>1 Confidential - D. Hoffman</p> <p>2 one stamped BQHC 00499. And when you get</p> <p>3 there, what I'd like to ask you to look at,</p> <p>4 in particular, is Sections 5.11, 5.12, and</p> <p>5 5.2.</p> <p>6 A. Uh-huh. Yep.</p> <p>7 Q. In 5.11, the agreement says that</p> <p>8 BQHC will pay FTI Cambio a fixed monthly fee,</p> <p>9 and then it describes the calculation.</p> <p>10 And then 5.12, the agreement</p> <p>11 provides that "The fee payable to FTI Cambio</p> <p>12 shall be allocated between Caritas and</p> <p>13 Wyckoff in proportion of the number of</p> <p>14 prospective licensed inpatient beds. BQHC</p> <p>15 shall be responsible, however, for payment of</p> <p>16 the fee and shall make all commercially</p> <p>17 reasonable efforts to collect payment from</p> <p>18 Caritas and Wyckoff."</p> <p>19 Why was BQHC made responsible for</p> <p>20 payment to FTI?</p> <p>21 A. Because FTI Cambio asked for the</p> <p>22 agreement to be created that way.</p> <p>23 Q. Something to which your side</p> <p>24 agreed, obviously?</p> <p>25 A. Was that a question?</p>

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<p style="text-align: right;">90</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Q. It was, but then I pulled up short.</b></p> <p>3 A. Objection to form.</p> <p>4 <b>Q. Who actually paid FTI for its</b></p> <p>5 <b>services under this contract?</b></p> <p>6 A. I don't know who physically wrote</p> <p>7 checks. But payments would have been made by</p> <p>8 Wyckoff and/or Caritas and resolved and</p> <p>9 allocated through due to/due from entries in</p> <p>10 the financials of each corporation.</p> <p>11 (Hoffman Exhibit No. 15, November</p> <p>12 7, 2007, Caritas Health Care, Inc.</p> <p>13 Meeting of the Board of Trustees</p> <p>14 minutes, Bates numbered BQHC 51896</p> <p>15 through BQHC 51901, was marked for</p> <p>16 identification.)</p> <p>17 BY MR. TZANETOPOULOS:</p> <p>18 <b>Q. Mr. Hoffman, the court reporter has</b></p> <p>19 <b>handed you a document labeled Hoffman Exhibit</b></p> <p>20 <b>No. 15. It's titled, "Caritas Health Care,</b></p> <p>21 <b>Inc. Meeting of the Board of Trustees," dated</b></p> <p>22 <b>November 7, 2007, and has been stamped with</b></p> <p>23 <b>BQHC 51896 through 51901.</b></p> <p>24 <b>If I can take you to the last page</b></p> <p>25 <b>once you have a chance.</b></p>	<p style="text-align: right;">92</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>lists Thomas Singleton as chief executive</b></p> <p>3 <b>officer of BQHC.</b></p> <p>4 <b>Was, in fact, Mr. Singleton chief</b></p> <p>5 <b>executive officer of BQHC at that time?</b></p> <p>6 A. I don't recall.</p> <p>7 <b>Q. It lists Mr. Goldberg as chief</b></p> <p>8 <b>financial officer of BQHC.</b></p> <p>9 <b>Was Mr. Goldberg CFO of BQHC at</b></p> <p>10 <b>that time?</b></p> <p>11 A. Yes. Mr. Goldberg was never</p> <p>12 anything other than chief financial officer</p> <p>13 of BQHC.</p> <p>14 <b>Q. What records does BQHC keep as to</b></p> <p>15 <b>who its officers are at any given time?</b></p> <p>16 A. Minutes, contracts, memoranda.</p> <p>17 Dominick Gio had been the CEO of</p> <p>18 Brooklyn-Queens Health Care up until a point</p> <p>19 in time when he was removed from that</p> <p>20 position by Tom Singleton. I don't recall</p> <p>21 there being a particular meeting where</p> <p>22 Mr. Singleton either designated himself or</p> <p>23 was designated by someone else as the chief</p> <p>24 executive officer in addition to being the</p> <p>25 chief financial officer. This was literally</p>
<p style="text-align: right;">91</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. Uh-huh.</p> <p>3 <b>Q. I take it it's one of the days</b></p> <p>4 <b>where you drew duty for being the meeting</b></p> <p>5 <b>secretary?</b></p> <p>6 A. Well, that is not my signature as</p> <p>7 indicated by the letter with a circle around</p> <p>8 it. But this would seem to indicate that I</p> <p>9 acted as secretary at the meeting.</p> <p>10 <b>Q. Do you recognize who signed your</b></p> <p>11 <b>name to the minutes?</b></p> <p>12 A. No, I don't.</p> <p>13 When was this? November of '07.</p> <p>14 There was a secretary at Mary Immaculate</p> <p>15 Hospital that was the secretary of</p> <p>16 Mr. Singleton, whose name I cannot recall off</p> <p>17 the top of my head. But since the meeting</p> <p>18 was first called to order at 4:40 in the</p> <p>19 afternoon, I can imagine that I took notes</p> <p>20 because she was going home. And that might</p> <p>21 be her mark indicating that she signed on my</p> <p>22 behalf. But I don't recall.</p> <p>23 <b>Q. Let me direct your attention, if I</b></p> <p>24 <b>may, to the first page of Exhibit No. 15 and</b></p> <p>25 <b>particularly to the list of invitees. It</b></p>	<p style="text-align: right;">93</p> <p>1 Confidential - D. Hoffman</p> <p>2 weeks before my first phone conversation with</p> <p>3 Mr. Zall where he informed me that my</p> <p>4 services were no longer desired.</p> <p>5 <b>Q. This may be a good time to ask you</b></p> <p>6 <b>another set of questions that I was going to</b></p> <p>7 <b>ask: When is it that Mr. Gio stopped being</b></p> <p>8 <b>chief executive officer of Wyckoff?</b></p> <p>9 A. Of Wyckoff?</p> <p>10 <b>Q. Yes, sir.</b></p> <p>11 A. He left Wyckoff's employment in</p> <p>12 early 2008 after I had begun my sabbatical.</p> <p>13 But I seem to recall that there was a period</p> <p>14 of time when Mr. Singleton changed his title.</p> <p>15 And he may have been the site administrator</p> <p>16 or some other title just at Wyckoff. But I</p> <p>17 can't recall the time frame or the specifics.</p> <p>18 <b>Q. And you mentioned that</b></p> <p>19 <b>Mr. Singleton removed Mr. Gio as CEO of</b></p> <p>20 <b>Brooklyn-Queens Health Care.</b></p> <p>21 <b>When did that happen?</b></p> <p>22 A. I don't know. But the fact that</p> <p>23 these minutes indicate that Singleton was</p> <p>24 listed as chief executive officer of BQHC,</p> <p>25 which suggests that Dominick Gio could no</p>



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2 longer be the chief executive officer;  
3 because you can't have two of those.

4 **Q. Was it Mr. Singelton's decision to**  
5 **fire Mr. Gio from Brooklyn-Queens Health**  
6 **Care? Was he the one that made the decision?**

7 A. I don't recall.

8 THE WITNESS: Off the record.

9 (Discussion off the record.)

10 BY MR. TZANETOPOULOS:

11 **Q. Mr. Hoffman, when is it that**  
12 **Mr. Singelton first began working at the**  
13 **hospitals, give or take? I'm just looking**  
14 **for a general time frame.**

15 A. Well, according to the  
16 administrative services agreement previously  
17 marked as Hoffman 14 of today's date, the  
18 administrative services agreement was entered  
19 into on August 13, 2007, but was effective  
20 July 19th, 2007.

21 And there is a reference, which I  
22 recall, I believe in the compensation section  
23 of the agreement on Bates Page 00499. The  
24 document states, "Notwithstanding the  
25 foregoing in as much as the CRO will not be

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2 services agreement speaks for itself in the  
3 duties designated to the CRO on Page 4 of 23,  
4 Bates stamped 00492 of Hoffman 14.

5 **Q. All right. Well, I appreciate what**  
6 **the contract says. But your testimony**  
7 **suggests that it was Mr. Singelton who was**  
8 **doing the hiring and firing at some point in**  
9 **time?**

10 A. Objection to form.

11 **Q. Is that true?**

12 A. Items A and B under the list of  
13 duties of the CRO at Page 4 of 23 Bates  
14 stamped 00492 specifically provides that the  
15 CRO will direct and hold accountable all  
16 senior management in day to day and long  
17 range activities. And item B says that it is  
18 the CRO's responsibility to review the  
19 performance of management, including the  
20 executive management team, and recommend to  
21 the Board any changes deemed necessary.  
22 That's my recollection of his  
23 responsibilities at the time.

24 **Q. My question to you is really the**  
25 **question of whether, in practice, his conduct**

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2 working full time during the month of July,  
3 the fee for the month of July 2007 will be  
4 the sum of 67,000."

5 So he was transitioning into the  
6 position in the month of July. He had a  
7 residual responsibility at an earlier  
8 engagement, as I recall.

9 MR. LOUGHLIN: And this was  
10 obviously separate and apart from the  
11 other FTI work that was done earlier in  
12 2007, that there has been testimony  
13 about today.

14 THE WITNESS: Right. This was in  
15 his role as chief restructuring officer.

16 BY MR. TZANETOPOULOS:

17 **Q. Correct. I understood that.**

18 As a practical matter, did there  
19 come a time between when Mr. Singelton  
20 arrived as chief restructuring officer and  
21 the beginning of your sabbatical where, for  
22 practical purposes, Mr. Singelton was the  
23 highest authority at Wyckoff, leaving aside  
24 the Board of Trustees?

25 A. Well, I think the administrative

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2 was different than what the contract says.  
3 And that is: Was it Mr. Singelton who was  
4 really doing the hiring and firing of senior  
5 management at some point in time?

6 A. I can't answer the question the way  
7 you asked it.

8 **Q. You discussed Mr. Singelton**  
9 **rearranging the responsibilities of Mr. Gio**  
10 **earlier. I don't want to characterize it**  
11 **because it was lengthy, but whatever those**  
12 **changes were that Mr. Singelton decided for**  
13 **Mr. Gio, did Mr. Singelton take those**  
14 **requests to any of the Boards?**

15 A. Not that I recall.

16 **Q. So to your recollection, he made**  
17 **those decisions on his own, correct?**

18 A. I can't answer that question.

19 **Q. At least he did so, as far as you**  
20 **know, without bringing these decisions to the**  
21 **Board?**

22 A. I was the principal liaison between  
23 Mr. Singelton and the Board and I don't  
24 recall his asking me for Board consultation  
25 on those decisions, or other decisions, that

25 (Pages 94 to 97)



<p>98</p> <p>1 Confidential - D. Hoffman</p> <p>2 he made regarding senior management,</p> <p>3 including myself.</p> <p>4 <b>Q. At any time before what you've</b></p> <p>5 <b>described as your sabbatical began, did the</b></p> <p>6 <b>Board reverse -- Let me ask a better question</b></p> <p>7 <b>because there's lots of boards.</b></p> <p>8 <b>At any time between when</b></p> <p>9 <b>Mr. Singelton began his role as chief</b></p> <p>10 <b>restructuring officer and when you departed</b></p> <p>11 <b>in November of 2007 --</b></p> <p>12 A. No. I departed at the end of</p> <p>13 December 2007.</p> <p>14 <b>Q. Okay. Thank you.</b></p> <p>15 <b>So from the time Mr. Singelton</b></p> <p>16 <b>arrived as chief restructuring officer until</b></p> <p>17 <b>you departed in 2007, are you aware of the</b></p> <p>18 <b>Board reversing any decision that</b></p> <p>19 <b>Mr. Singelton made?</b></p> <p>20 A. Never.</p> <p>21 <b>Q. Is that true for all three boards:</b></p> <p>22 <b>Wyckoff, BQHC, and Caritas?</b></p> <p>23 A. Yes.</p> <p>24 THE WITNESS: Can I consult with my</p> <p>25 attorney? We'll step out.</p>	<p>100</p> <p>1 Confidential - D. Hoffman</p> <p>2 Caritas and Brooklyn-Queens Health Care in</p> <p>3 the context of the boards authorizing</p> <p>4 expenditure of up to \$10 million to assist</p> <p>5 Caritas in the attempted rescue of St. John's</p> <p>6 and Mary Immaculate.</p> <p>7 <b>Q. So is it fair that the contracts</b></p> <p>8 <b>were discussed in general, but the actual</b></p> <p>9 <b>documents were not presented to the Board?</b></p> <p>10 A. I don't recall the initial -- What</p> <p>11 is this? 12/28/2006 document signed by</p> <p>12 Harold McDonald as executive vice president</p> <p>13 and chief operating officer of</p> <p>14 Brooklyn-Queens Health Care having been</p> <p>15 presented to the Board for their review,</p> <p>16 though the Board was certainly consulted and</p> <p>17 was aware that management was entering into</p> <p>18 prepayment arrangements in order to raise</p> <p>19 additional funds to support the rescue of</p> <p>20 St. John's and Mary Immaculate.</p> <p>21 <b>Q. Since your return in 2008 -- Before</b></p> <p>22 <b>we get there.</b></p> <p>23 <b>Before your departure at the end of</b></p> <p>24 <b>2007, were the contract documents themselves</b></p> <p>25 <b>of any affiliation agreement between a</b></p>
<p>99</p> <p>1 Confidential - D. Hoffman</p> <p>2 (Mr. Loughlin and the deponent left</p> <p>3 the room for a discussion off the</p> <p>4 record.)</p> <p>5 THE WITNESS: To continue my</p> <p>6 answer, to the best of my recollection,</p> <p>7 Mr. Singelton never consulted with the</p> <p>8 Board to receive its support or</p> <p>9 endorsement of decisions that he made</p> <p>10 concerning personnel and other matters.</p> <p>11 BY MR. TZANETOPOULOS:</p> <p>12 <b>Q. At any time while you have been</b></p> <p>13 <b>general counsel and attending Board meetings</b></p> <p>14 <b>for any of these entities, has -- Let me ask</b></p> <p>15 <b>a better question. That got convoluted.</b></p> <p>16 <b>During your time as general counsel</b></p> <p>17 <b>at Wyckoff, have any of the affiliation</b></p> <p>18 <b>agreements between Ross and Wyckoff been</b></p> <p>19 <b>presented to the Wyckoff Board before they</b></p> <p>20 <b>were signed?</b></p> <p>21 A. The documents themselves?</p> <p>22 <b>Q. Yes.</b></p> <p>23 A. Up to the time that I left on my</p> <p>24 sabbatical, no. Though they were certainly</p> <p>25 discussed in the context of the formation of</p>	<p>101</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Caribbean medical school and Wyckoff or BQHC</b></p> <p>3 <b>or Caritas presented to the Board before they</b></p> <p>4 <b>were signed?</b></p> <p>5 A. I can't delineate Caribbean medical</p> <p>6 school agreements in particular. But in the</p> <p>7 latter months of my tenure before my</p> <p>8 sabbatical, I brought to the Board's</p> <p>9 attention agreements, contracts, and</p> <p>10 employment arrangements that Mr. Singelton</p> <p>11 sought approval for or intended to execute on</p> <p>12 behalf of the three entities where I had</p> <p>13 concerns about the appropriateness of those</p> <p>14 documents, ending, obviously, when I was</p> <p>15 fired.</p> <p>16 <b>Q. In any of the cases where you</b></p> <p>17 <b>raised concerns, did the Board refuse the</b></p> <p>18 <b>approve the contracts that you brought to its</b></p> <p>19 <b>attention?</b></p> <p>20 A. Yes. On a number of occasions the</p> <p>21 Board instructed me to communicate to</p> <p>22 Mr. Singelton that he was not authorized to</p> <p>23 continue to incur debt or incur obligations</p> <p>24 on behalf of Wyckoff for the benefit of</p> <p>25 Caritas.</p>

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<p style="text-align: right;">102</p> <p>1 Confidential - D. Hoffman</p> <p>2 <b>Q. In which instances?</b></p> <p>3 A. There were a number of instances</p> <p>4 including some employment arrangements for</p> <p>5 additional consultants that Singelton wanted</p> <p>6 to bring in. And in one particular case that</p> <p>7 I can recall, a very costly apartment lease</p> <p>8 arrangement for one of these consultants.</p> <p>9 And in general with regard to incurring</p> <p>10 contractual liability for Wyckoff as a</p> <p>11 guarantor of service agreements to Caritas.</p> <p>12 <b>Q. Can you remember specifically any</b></p> <p>13 <b>others, other than those that you</b></p> <p>14 <b>specifically testified about?</b></p> <p>15 A. There were a constellation of</p> <p>16 agreements and obligations and efforts to use</p> <p>17 Wyckoff as a guarantor for provision of</p> <p>18 services to Caritas. I don't remember off</p> <p>19 the top of my head the names of the</p> <p>20 individual parties and agreements; some of</p> <p>21 them have been subject of litigation since</p> <p>22 Mr. Singelton was fired in September of 2008.</p> <p>23 <b>Q. From your recollection of the Board</b></p> <p>24 <b>meetings in 2006 that you attended, was the</b></p> <p>25 <b>structure of the contract between American</b></p>	<p style="text-align: right;">104</p> <p>1 Confidential - D. Hoffman</p> <p>2 head, know which entities were parties to the</p> <p>3 note.</p> <p>4 <b>Q. Was the structure of that note</b></p> <p>5 <b>brought to the Board's attention before it</b></p> <p>6 <b>was executed?</b></p> <p>7 A. Since I don't remember when it was</p> <p>8 executed, it would be impossible for me to</p> <p>9 answer that question.</p> <p>10 <b>Q. When is it that Rajiv Garg became</b></p> <p>11 <b>either interim or full CEO -- When is it that</b></p> <p>12 <b>Rajiv Garg became interim CEO of Wyckoff?</b></p> <p>13 A. I'm going to object to the form of</p> <p>14 the question, just to the extent that that</p> <p>15 prefatory language is part of the question.</p> <p>16 <b>Q. It's not, I started over. I'll</b></p> <p>17 <b>start over.</b></p> <p>18 <b>When is it that Rajiv Garg became</b></p> <p>19 <b>interim CEO of Wyckoff?</b></p> <p>20 A. I don't remember the exact date off</p> <p>21 of the top of my head. But it was at and</p> <p>22 around the time that I returned from my</p> <p>23 sabbatical.</p> <p>24 <b>Q. Would it have been after Singelton</b></p> <p>25 <b>and the FTI group left?</b></p>
<p style="text-align: right;">103</p> <p>1 Confidential - D. Hoffman</p> <p>2 University of the Caribbean and</p> <p>3 Brooklyn-Queens Health Care Wyckoff at</p> <p>4 Caritas brought to the Board's attention</p> <p>5 before it was executed?</p> <p>6 A. I don't know which contract you're</p> <p>7 referring to, so I can't answer your</p> <p>8 question.</p> <p>9 <b>Q. I'll be more specific.</b></p> <p>10 <b>You're aware, of course, through</b></p> <p>11 <b>the litigation and otherwise that American</b></p> <p>12 <b>University of the Caribbean, Brooklyn-Queens</b></p> <p>13 <b>Health Care, Wyckoff Heights Medical Center,</b></p> <p>14 <b>and Caritas were parties to a promissory</b></p> <p>15 <b>note?</b></p> <p>16 A. Objection to form.</p> <p>17 And I'm not clear what you're</p> <p>18 referring to.</p> <p>19 <b>Q. Are you aware that</b></p> <p>20 <b>American University of the Caribbean, Wyckoff</b></p> <p>21 <b>Heights Medical Center, Brooklyn-Queens</b></p> <p>22 <b>Health Care, and Caritas executed a</b></p> <p>23 <b>promissory note agreement with one another?</b></p> <p>24 A. I know that there is a promissory</p> <p>25 note with AUC. I don't, off the top of my</p>	<p style="text-align: right;">105</p> <p>1 Confidential - D. Hoffman</p> <p>2 A. Yes. Sometime around November</p> <p>3 of 2008, maybe mid-November.</p> <p>4 <b>Q. Was there a CEO at Wyckoff between</b></p> <p>5 <b>the time that Mr. Gio was dismissed and</b></p> <p>6 <b>Mr. Garg was engaged as interim CEO?</b></p> <p>7 A. From review of documents in the</p> <p>8 course of this litigation, I can recall</p> <p>9 references to Mr. Singelton holding himself</p> <p>10 out as CEO. And at one point during my</p> <p>11 sabbatical, I believe that Dr. Nirmal Mattoo,</p> <p>12 who has been a long-time member of the</p> <p>13 medical staff was named as either site</p> <p>14 administrator, executive director, and/or</p> <p>15 president and CEO of Wyckoff during the</p> <p>16 Singelton tenure.</p> <p>17 (Hoffman Exhibit No. 16, January 8,</p> <p>18 2009, Brooklyn Queens Healthcare, Inc.</p> <p>19 Board of Trustees Meeting Minutes, Bates</p> <p>20 numbered BQHC 00211 through BQHC 00214,</p> <p>21 was marked for identification.)</p> <p>22 BY MR. TZANETOPOULOS:</p> <p>23 <b>Q. Mr. Hoffman, the court reporter has</b></p> <p>24 <b>handed to you a document she's marked as</b></p> <p>25 <b>Hoffman Exhibit No. 16. It's entitled</b></p>

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<p style="text-align: right;">106</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 "Brooklyn Queens Healthcare, Inc. Board of</p> <p>3 Trustees Meetings Minutes January 8, 2009."</p> <p>4 And it's been marked BQHC 00211 through 214.</p> <p>5 A. Uh-huh.</p> <p>6 Q. I'd like to direct your attention</p> <p>7 to a couple places in the document and ask</p> <p>8 you questions about it. We'll skip around a</p> <p>9 little bit.</p> <p>10 First, the second full paragraph</p> <p>11 following the word "resolution" reads,</p> <p>12 "Mr. Garg advised the Board Members that</p> <p>13 there is need to establish a new tax ID</p> <p>14 number for BQHC. Following some discussion,</p> <p>15 it was decided that this issue would be</p> <p>16 discussed further at a separate meeting with</p> <p>17 Mr. Garg, Mr. Hoffman, and Mr. Haller.</p> <p>18 Discussion then ensued regarding the tax laws</p> <p>19 and review of the properties owned by Wyckoff</p> <p>20 Heights Medical Center. Mr. Garg reported</p> <p>21 that we have an opportunity to potentially</p> <p>22 raise \$4 million through the financing of</p> <p>23 certain real estate owned by Wyckoff and/or</p> <p>24 BQHC."</p> <p>25 Let me just start there.</p>	<p style="text-align: right;">108</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 read, "Mr. Garg mentioned that there is an</p> <p>3 opportunity to raise working capital of</p> <p>4 approximately \$4 million through the</p> <p>5 financing of certain BQHC and/or Wyckoff</p> <p>6 properties. The potential financing was</p> <p>7 discussed in great detail by the Board</p> <p>8 members. And it was suggested that the</p> <p>9 following resolution be adopted as following:</p> <p>10 Resolve that the BQHC Board members voted to</p> <p>11 transfer all ancillary properties currently</p> <p>12 owned by BQHC, Inc. into a new holding</p> <p>13 corporation with a new tax ID number."</p> <p>14 At this point, were there</p> <p>15 properties that BQHC held other than the</p> <p>16 parking lot that you discussed earlier?</p> <p>17 A. No.</p> <p>18 Q. Were properties ever transferred</p> <p>19 into a holding corporation with a new tax ID?</p> <p>20 A. No.</p> <p>21 Q. Can you think of why it was if</p> <p>22 BQHC's only asset was an already heavily</p> <p>23 encumbered parking lot, it would have helped</p> <p>24 to transfer it to a new holding corporation</p> <p>25 with a new tax ID?</p>
<p style="text-align: right;">107</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Why was it that the Board thought</b></p> <p>3 <b>there was a need to establish a new tax ID</b></p> <p>4 <b>number for Brooklyn-Queens Health Care?</b></p> <p>5 A. I don't specifically recall. But</p> <p>6 it would appear from these minutes that it</p> <p>7 would be related to the dormitory authority</p> <p>8 making a loan to BQHC.</p> <p>9 Q. Were you involved in any of those</p> <p>10 discussions about the dormitory authority</p> <p>11 making a loan?</p> <p>12 A. Yes.</p> <p>13 Q. What was the purpose of the loan</p> <p>14 that was being discussed?</p> <p>15 A. I don't recall specifically. But</p> <p>16 it would have been related to the need for</p> <p>17 operating cash.</p> <p>18 Q. For Caritas, for Wyckoff, or for</p> <p>19 both?</p> <p>20 A. It would appear from these minutes</p> <p>21 that it would have been related to a loan to</p> <p>22 Caritas. But I'm just interpreting the</p> <p>23 document that you presented to me.</p> <p>24 Q. If you go to the second page of the</p> <p>25 exhibit, down toward the bottom, the minutes</p>	<p style="text-align: right;">109</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 A. Well, the parking lot was an asset</p> <p>3 of Wyckoff. BQHC didn't pay any value to</p> <p>4 Wyckoff for the asset. It just transferred</p> <p>5 along with the corporate entity when it</p> <p>6 flipped from being a subordinate holding</p> <p>7 corporation to a superior passive parent</p> <p>8 corporation. And all of these discussions</p> <p>9 were related to requirements of DASNY in</p> <p>10 connection with the making of these loans.</p> <p>11 We were, as you can probably imagine,</p> <p>12 struggling desperately to keep Caritas alive.</p> <p>13 (Hoffman Exhibit No. 17, Brooklyn</p> <p>14 Queens Health Care Board of Trustees</p> <p>15 Meeting Minutes, March 5, 2009, Bates</p> <p>16 numbered BQHC 51800 through BQHC 51803,</p> <p>17 was marked for identification.)</p> <p>18 BY MR. TZANETOPOULOS:</p> <p>19 Q. Mr. Hoffman, the court reporter has</p> <p>20 handed you a document labeled Hoffman Exhibit</p> <p>21 No. 17 entitled, "Brooklyn Queens Health Care</p> <p>22 Board of Trustees Meeting Minutes, March 5,</p> <p>23 2009," stamped with Bates numbers BQHC 51800</p> <p>24 through 51803.</p> <p>25 If I can refer your attention to</p>

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<p style="text-align: right;">110</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>the top of the second page, it reads, "In</b></p> <p>3 <b>open discussion it was noted that 20 AUC</b></p> <p>4 <b>medical students currently training at</b></p> <p>5 <b>Caritas will finish out their current</b></p> <p>6 <b>rotations at Wyckoff. Approximately 100 AUC</b></p> <p>7 <b>students have been reassigned to other</b></p> <p>8 <b>hospitals for their training."</b></p> <p>9 <b>Those other hospitals for the 100</b></p> <p>10 <b>AUC that is referred to, is that hospitals</b></p> <p>11 <b>unrelated to Wyckoff or Caritas?</b></p> <p>12 <b>A. Yeah. I mean, that was all AUC's</b></p> <p>13 <b>doing. I told the dean of AUC that in order</b></p> <p>14 <b>to not prejudice the students currently at</b></p> <p>15 <b>Caritas in the middle of their rotations that</b></p> <p>16 <b>I would, in some way, make sure that they got</b></p> <p>17 <b>educated at Wyckoff, even if I had to do it</b></p> <p>18 <b>myself.</b></p> <p>19 <b>Q. All right. Going down the line a</b></p> <p>20 <b>little bit, there is discussion that the</b></p> <p>21 <b>Caritas bankruptcy enclosure was discussed.</b></p> <p>22 <b>Let's stop there.</b></p> <p>23 <b>When did Caritas file for</b></p> <p>24 <b>bankruptcy?</b></p> <p>25 <b>A. February 8th or 12th, something</b></p>	<p style="text-align: right;">112</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>ethical and religious directives of the</b></p> <p>3 <b>conference of Catholic Bishops in America be</b></p> <p>4 <b>able to be honored for St. John's and Mary</b></p> <p>5 <b>Immaculate. And one of those provisions is</b></p> <p>6 <b>the prohibition against cooperation between</b></p> <p>7 <b>institutions that honor the ethical and</b></p> <p>8 <b>religious directives and those that do not.</b></p> <p>9 <b>The only way that we could accomplish that</b></p> <p>10 <b>requirement of the asset purchase agreement</b></p> <p>11 <b>and also be able to operate Caritas was to</b></p> <p>12 <b>have a passive parent entity that didn't</b></p> <p>13 <b>engage in practices which violate the ethical</b></p> <p>14 <b>and religious directives. BQHC was that</b></p> <p>15 <b>nonclinical passive parent entity. That's a</b></p> <p>16 <b>standard mechanism used when you have</b></p> <p>17 <b>Catholic institutions put under the</b></p> <p>18 <b>management of non-Catholic institutions.</b></p> <p>19 <b>Q. This one has always puzzled me:</b></p> <p>20 <b>How was it that the arch diocese was able to</b></p> <p>21 <b>insist on such requirements?</b></p> <p>22 <b>A. It was a term of the asset purchase</b></p> <p>23 <b>agreement. And in particular the financing</b></p> <p>24 <b>back for a significant part of the purchase</b></p> <p>25 <b>price by St. Vincent's; it was a term that</b></p>
<p style="text-align: right;">111</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>like that.</b></p> <p>3 <b>Q. 2009?</b></p> <p>4 <b>A. Early part of 2009.</b></p> <p>5 <b>Q. And between the time the bankruptcy</b></p> <p>6 <b>petition was filed, how long before the doors</b></p> <p>7 <b>were closed?</b></p> <p>8 <b>A. I don't recall the specific dates.</b></p> <p>9 <b>It's obviously a matter of public record. It</b></p> <p>10 <b>went quicker than people thought it would.</b></p> <p>11 <b>Q. Weeks?</b></p> <p>12 <b>A. I think it was about a month, plus</b></p> <p>13 <b>or minus. But I really don't recall.</b></p> <p>14 <b>Clearly by March 5th they're talking about it</b></p> <p>15 <b>having happened. So . . .</b></p> <p>16 <b>Q. Further down in that same paragraph</b></p> <p>17 <b>the minutes read that, "Mr. Rucigay stated</b></p> <p>18 <b>that we should plan to dissolve BQHC by that</b></p> <p>19 <b>time."</b></p> <p>20 <b>Why was it that the thought was</b></p> <p>21 <b>that BQHC should be dissolved? What was the</b></p> <p>22 <b>discussion?</b></p> <p>23 <b>A. It no longer served its intended</b></p> <p>24 <b>purpose. It was only created to accommodate</b></p> <p>25 <b>the requirements of St. Vincent's, that the</b></p>	<p style="text-align: right;">113</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>they insisted on.</b></p> <p>3 <b>Q. Did the asset purchase take place</b></p> <p>4 <b>under the auspices of bankruptcy court?</b></p> <p>5 <b>A. Under the auspices of the</b></p> <p>6 <b>bankruptcy court overseeing the St. Vincent's</b></p> <p>7 <b>first bankruptcy, yes.</b></p> <p>8 <b>Q. That's why I'm curious how they</b></p> <p>9 <b>pulled this off with their hospital in</b></p> <p>10 <b>bankruptcy being able to impose religious</b></p> <p>11 <b>requirements of the sale?</b></p> <p>12 <b>A. I'm sorry. Hold on. I'm getting</b></p> <p>13 <b>my bankruptcies confused. This was -- Yeah,</b></p> <p>14 <b>that was the first bankruptcy. St. Vincent's</b></p> <p>15 <b>provided some of the financing, took a note</b></p> <p>16 <b>on part of the purchase price. And one of</b></p> <p>17 <b>the quid pro quos for provided that financing</b></p> <p>18 <b>was that St. John's and Mary Immaculate</b></p> <p>19 <b>continue to the ethical and religious</b></p> <p>20 <b>directives of the conference of Catholic</b></p> <p>21 <b>Bishops for so long as the hospitals were</b></p> <p>22 <b>known as St. John's and Mary Immaculate</b></p> <p>23 <b>hospitals. That was a provision of the asset</b></p> <p>24 <b>purchase agreement. And that was all</b></p> <p>25 <b>approved by the bankruptcy court.</b></p>



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<p style="text-align: right;">114</p> <p>1 Confidential - D. Hoffman</p> <p>2 MR. LOUGHLIN: Just as a footnote</p> <p>3 to that, you may well be aware of this,</p> <p>4 that the Arch Bishop of the Brooklyn</p> <p>5 diocese had a right to appoint two</p> <p>6 members to the Board of Caritas, Father</p> <p>7 Frawley and Mr. Lane. And part of --</p> <p>8 That was obviously part of ensuring that</p> <p>9 there would be adherence to the</p> <p>10 religious and ethical principals that</p> <p>11 Mr. Hoffman was referring to.</p> <p>12 THE WITNESS: In fact, they served</p> <p>13 on the Caritas Board, but couldn't serve</p> <p>14 on the BQHC Board because the BQHC Board</p> <p>15 was the passive parent of Wyckoff, which</p> <p>16 does not adhere to the ethical and</p> <p>17 religious directives. That was the</p> <p>18 whole purpose behind the particular</p> <p>19 passive parent sole corporate member</p> <p>20 structure that we adopted in contrast to</p> <p>21 the North Shore LIJ model, which is also</p> <p>22 a passive parent sole corporate member,</p> <p>23 but that's a single signature model. It</p> <p>24 gets complicated. But that would have</p> <p>25 violated the ethical and religious</p>	<p style="text-align: right;">116</p> <p>1 Confidential - D. Hoffman</p> <p>2 "Mr. Rucigay then discussed the issue of</p> <p>3 Caritas pension liability."</p> <p>4 <b>Q. And what was the Meditech issue?</b></p> <p>5 A. Again, I don't recall specifically</p> <p>6 what was being discussed in March of 2009.</p> <p>7 But Caritas had implemented the Meditech</p> <p>8 electronic medical records system and they</p> <p>9 owed Meditech money for their part of the</p> <p>10 implementation.</p> <p>11 <b>Q. The Meditech contract, was that a</b></p> <p>12 <b>contract between Meditech and Caritas,</b></p> <p>13 <b>Meditech and BQHC, or Meditech and Wyckoff?</b></p> <p>14 A. I don't remember BQHC being a party</p> <p>15 to the Meditech and I can't think of any</p> <p>16 reason why it would have.</p> <p>17 It would have been Caritas because</p> <p>18 Wyckoff had already implemented Meditech. We</p> <p>19 had started with Meditech a year and a half,</p> <p>20 two years earlier. So I would infer that</p> <p>21 that would have been the Caritas-Meditech</p> <p>22 contract.</p> <p>23 (Hoffman Exhibit No. 18, Wyckoff</p> <p>24 Heights Medical Center Board of Trustees</p> <p>25 Meeting Minutes, December 4, 2008, Bates</p>
<p style="text-align: right;">115</p> <p>1 Confidential - D. Hoffman</p> <p>2 directives.</p> <p>3 BY MR. TZANETOPOULOS:</p> <p>4 <b>Q. Let me direct your attention to</b></p> <p>5 <b>Page 3 of those same minutes in</b></p> <p>6 <b>Exhibit No. 17, March 3, 2009, BQHC Board</b></p> <p>7 <b>meeting.</b></p> <p>8 <b>At the bottom of the page it reads,</b></p> <p>9 <b>"In closing, Mr. Rucigay" --</b></p> <p>10 A. What page?</p> <p>11 <b>Q. Page 3 at the bottom.</b></p> <p>12 A. "In closing..." Yes?</p> <p>13 <b>Q. -- "Mr. Rucigay stated that there</b></p> <p>14 <b>are three issues we will concern ourselves</b></p> <p>15 <b>with and follow up on: Ross University,</b></p> <p>16 <b>Meditech, and the pension issue."</b></p> <p>17 <b>Let's start with Ross. What were</b></p> <p>18 <b>the issues with Ross that were discussed in</b></p> <p>19 <b>this meeting? I don't see any other</b></p> <p>20 <b>reference to it.</b></p> <p>21 A. You know, I'm not sure because I</p> <p>22 can't recall what this redacted part was.</p> <p>23 But these were all, you know, financial</p> <p>24 obligations of Caritas. That's what we were</p> <p>25 talking about then. Two paragraphs above,</p>	<p style="text-align: right;">117</p> <p>1 Confidential - D. Hoffman</p> <p>2 numbered BQHC 00159 through BQHC 00167,</p> <p>3 was marked for identification.)</p> <p>4 BY MR. TZANETOPOULOS:</p> <p>5 <b>Q. Mr. Hoffman, the court reporter has</b></p> <p>6 <b>handed to you a document that she has marked</b></p> <p>7 <b>as Hoffman Exhibit No. 18. It's "Wyckoff</b></p> <p>8 <b>Heights Medical Center Board of Trustees</b></p> <p>9 <b>Meeting Minutes," dated December 4, 2008.</b></p> <p>10 A. Uh-huh.</p> <p>11 <b>Q. It's Bates numbered BQHC 00159</b></p> <p>12 <b>through 00167.</b></p> <p>13 THE WITNESS: Off the record.</p> <p>14 (Discussion off the record.)</p> <p>15 BY MR. TZANETOPOULOS:</p> <p>16 <b>Q. Take a look at as much of this as</b></p> <p>17 <b>you would find helpful. I'd like to direct</b></p> <p>18 <b>your attention when you're ready --</b></p> <p>19 A. I'm ready.</p> <p>20 <b>Q. -- to the page Bates labeled BQHC</b></p> <p>21 <b>00161. And there on the second paragraph it</b></p> <p>22 <b>reads, "In open discussion the issue of the</b></p> <p>23 <b>Caritas closure versus bankruptcy was</b></p> <p>24 <b>discussed by the Board members." This is the</b></p> <p>25 <b>Wyckoff Board. "Mr. Hoffman advised the</b></p>

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<p>118</p> <p>1 Confidential - D. Hoffman</p> <p>2 Board of Trustees of major contractual</p> <p>3 obligations of Wyckoff, the temporary nursing</p> <p>4 agency medical school and training, offshore</p> <p>5 medical school, the nonunion pension, and</p> <p>6 Meditech."</p> <p>7 So it is correct, is it not,</p> <p>8 Mr. Hoffman, that you recognized as a</p> <p>9 contractual obligation of Wyckoff and the</p> <p>10 potential liability there under should</p> <p>11 Caritas close -- I should ask a better</p> <p>12 question.</p> <p>13 It is correct, is it not, that as</p> <p>14 of December 4, 2008, you recognized that</p> <p>15 should Caritas close, Wyckoff would have a</p> <p>16 contractual obligation to Ross, did you not?</p> <p>17 A. Objection. Privilege.</p> <p>18 Q. What was discussed that's reflected</p> <p>19 in the Board meeting minutes here?</p> <p>20 A. Objection. Privilege.</p> <p>21 Q. Let me just take the position</p> <p>22 now -- you all can do what you want but --</p> <p>23 MR. LOUGHLIN: I beg your pardon.</p> <p>24 I was actually looking at this because</p> <p>25 it seemed to me that it's possible that</p>	<p>120</p> <p>1 Confidential - D. Hoffman</p> <p>2 entitled to examine what's produced.</p> <p>3 MR. LOUGHLIN: Yeah. But it seemed</p> <p>4 to me that the prior question had</p> <p>5 stipulated a invocation of the privilege</p> <p>6 by the witness.</p> <p>7 BY MR. TZANETOPOULOS:</p> <p>8 Q. Did you advise the Board of</p> <p>9 Trustees -- Let me ask a different question.</p> <p>10 Are the minutes accurate in this</p> <p>11 respect: Did you advise the Board of</p> <p>12 Trustees of Wyckoff Heights Medical Center</p> <p>13 that it had major contractual obligations</p> <p>14 with respect to the temporary nursing agency,</p> <p>15 medical school training, offshore medical</p> <p>16 school, the nonunion pension, and Meditech?</p> <p>17 A. Objection. Foundation and</p> <p>18 privilege.</p> <p>19 Q. Do you refuse to answer the</p> <p>20 question on the basis of attorney-client</p> <p>21 privilege?</p> <p>22 A. And lack of foundation.</p> <p>23 Q. That's not a basis, as you know,</p> <p>24 for refusing to answer the question.</p> <p>25 A. Well, I object to the question for</p>
<p>119</p> <p>1 Confidential - D. Hoffman</p> <p>2 Exhibit 18 was a draft. These are</p> <p>3 unsigned minutes and there are black</p> <p>4 lines and deletions signs in the margin.</p> <p>5 I wonder if this is even a final version</p> <p>6 of the minutes of the December 4, 2008.</p> <p>7 It's obviously a document we produced,</p> <p>8 but it may well be a draft.</p> <p>9 THE WITNESS: It clearly is a</p> <p>10 draft. But it doesn't matter, it</p> <p>11 doesn't change my objection.</p> <p>12 BY MR. TZANETOPOULOS:</p> <p>13 Q. I'm happy to ask the question with</p> <p>14 both of you here. I will tell you this is</p> <p>15 the only type of minutes we received from you</p> <p>16 for this December 4, 2008, meeting; we did</p> <p>17 not get a signed version.</p> <p>18 So let me, Mr. Hoffman: If this is</p> <p>19 what we have, is there a signed version?</p> <p>20 A. I don't remember.</p> <p>21 MR. LOUGHLIN: Were you asking him</p> <p>22 a question about the invocation of the</p> <p>23 privilege?</p> <p>24 MR. TZANETOPOULOS: Yeah.</p> <p>25 Obviously you've produced it and I'm</p>	<p>121</p> <p>1 Confidential - D. Hoffman</p> <p>2 both reasons.</p> <p>3 Q. Well, my inquiry to you,</p> <p>4 Mr. Hoffman, is: Do you refuse to answer the</p> <p>5 question on the basis of attorney-client</p> <p>6 privilege?</p> <p>7 A. That is one of the bases for my not</p> <p>8 answering the question.</p> <p>9 Q. And what's the other?</p> <p>10 A. Foundation.</p> <p>11 Q. And you know that that's not a</p> <p>12 reason for avoiding answering the question.</p> <p>13 A. I can't answer the question as you</p> <p>14 asked it.</p> <p>15 MR. LOUGHLIN: It's really an</p> <p>16 invocation of the privilege and,</p> <p>17 perhaps, a request that you rephrase the</p> <p>18 question in a way that would avoid the</p> <p>19 issue of privilege and would satisfy the</p> <p>20 form objection.</p> <p>21 THE WITNESS: Off the record.</p> <p>22 (Discussion off the record.)</p> <p>23 BY MR. TZANETOPOULOS:</p> <p>24 Q. Mr. Hoffman, these Board minutes</p> <p>25 read, and I quote, "Mr. Hoffman advised the</p>



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<p style="text-align: right;">122</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>Board of Trustees of the major contractual</b></p> <p>3 <b>obligations of Wyckoff, the temporary nursing</b></p> <p>4 <b>agency, medical school training (offshore</b></p> <p>5 <b>medical school) the nonunion pension,</b></p> <p>6 <b>Meditech."</b></p> <p>7 <b>Is that statement in the minutes an</b></p> <p>8 <b>accurate reflection of what occurred at that</b></p> <p>9 <b>meeting?</b></p> <p>10 A. I don't recall. It is underlined</p> <p>11 as having been edited and this is an unsigned</p> <p>12 document. I don't have a personal and</p> <p>13 specific recollection of what discussions</p> <p>14 occurred at the December 4th, 2008, meeting</p> <p>15 of the Wyckoff Heights Medical Center Board</p> <p>16 of Trustees.</p> <p>17 <b>Q. Do you dispute that you advised the</b></p> <p>18 <b>Board of Trustees of Wyckoff as is reflected</b></p> <p>19 <b>in that sentence in the minutes?</b></p> <p>20 A. I can't answer that question the</p> <p>21 way you asked it.</p> <p>22 MR. LOUGHLIN: I think the witness</p> <p>23 has said he doesn't recall and that the</p> <p>24 document, Exhibit 18, hasn't refreshed</p> <p>25 his recollection.</p>	<p style="text-align: right;">124</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 can certainly go back and do a supplemental</p> <p>3 search to see if there are a signed,</p> <p>4 corrected or edited version of these minutes.</p> <p>5 But right now I don't know.</p> <p>6 (Hoffman Exhibit No. 19, Disclosure</p> <p>7 of Ownership and Control, Bates numbered</p> <p>8 BQHC 03413 through BQHC 03415, was</p> <p>9 marked for identification.)</p> <p>10 BY MR. TZANETOPOULOS:</p> <p>11 <b>Q. Mr. Hoffman, the court reporter has</b></p> <p>12 <b>handed you a document that she's marked as</b></p> <p>13 <b>Hoffman Exhibit No. 19.</b></p> <p>14 A. Uh-huh.</p> <p>15 <b>Q. It's titled, "Disclosure of</b></p> <p>16 <b>Ownership and Control." It's has been</b></p> <p>17 <b>stamped with BQHC 03413 through 3415.</b></p> <p>18 <b>What is this document?</b></p> <p>19 A. It's a disclosure of ownership and</p> <p>20 control form. I know that because it says so</p> <p>21 at the top of the page.</p> <p>22 <b>Q. Do you know anything about its</b></p> <p>23 <b>purpose?</b></p> <p>24 A. No.</p> <p>25 <b>Q. I think Medicaid but you guys are</b></p>
<p style="text-align: right;">123</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 BY MR. TZANETOPOULOS:</p> <p>3 <b>Q. That is my question: You just</b></p> <p>4 <b>don't know one way or the other at this</b></p> <p>5 <b>point?</b></p> <p>6 A. Is that a question?</p> <p>7 <b>Q. Yes.</b></p> <p>8 A. What's the question?</p> <p>9 <b>Q. The question is: It's a fact that</b></p> <p>10 <b>you don't recall one way or the other whether</b></p> <p>11 <b>this is accurate?</b></p> <p>12 A. I have previously testified under</p> <p>13 oath that I do not recall specifically what I</p> <p>14 discussed with the Board at the meeting on</p> <p>15 December 4th, 2008, and I don't know that</p> <p>16 these unsigned draft minutes accurately</p> <p>17 reflect what I said.</p> <p>18 <b>Q. Does Wyckoff possess any signed</b></p> <p>19 <b>minutes for this meeting?</b></p> <p>20 A. Wyckoff has hundreds of thousands</p> <p>21 of pages of documents. We have faithfully</p> <p>22 provided to you everything that we could find</p> <p>23 that was responsive to your demand. I did</p> <p>24 not, prior to this moment, realize that this</p> <p>25 was an unsigned draft of these minutes. We</p>	<p style="text-align: right;">125</p> <p>1 <b>Confidential - D. Hoffman</b></p> <p>2 <b>the experts.</b></p> <p>3 A. Forms like these are used for any</p> <p>4 number of purposes, including corporate</p> <p>5 compliance representations, but I don't</p> <p>6 recognize the form or the annotation at the</p> <p>7 bottom of the page. I can't actually even</p> <p>8 read it. I don't know. Sorry.</p> <p>9 <b>Q. Let me direct you at least to the</b></p> <p>10 <b>second page of the exhibit. It shows Hal</b></p> <p>11 <b>McNeil signing as VP corporate finance.</b></p> <p>12 A. Uh-huh.</p> <p>13 <b>Q. Of which of these entities,</b></p> <p>14 <b>Caritas, Brooklyn-Queens Health Care, or</b></p> <p>15 <b>Wyckoff, if any, was Mr. McNeil vice</b></p> <p>16 <b>president of corporate finance at the time?</b></p> <p>17 A. On January 5th, 2007, he might have</p> <p>18 been chief financial officer of Caritas, in</p> <p>19 addition to Brooklyn-Queens Health Care. I</p> <p>20 don't recall when Rich Sarli became the chief</p> <p>21 financial officer of Caritas but it was at</p> <p>22 that moment that Hal McNeil became CFO just</p> <p>23 of Brooklyn-Queens Health Care.</p> <p>24 THE WITNESS: Off the record.</p> <p>25 (Discussion off the record.)</p>

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<p style="text-align: right;">126</p> <p>1 Confidential - D. Hoffman</p> <p>2 BY MR. TZANETOPOULOS:</p> <p>3 Q. Mr. Hoffman, let me refer you back,</p> <p>4 if I may, to Hoffman Exhibit No. 2, the</p> <p>5 original affiliation agreement, and in</p> <p>6 particular, the page that bears the Bates</p> <p>7 numbers ROSS0064. I call your attention to</p> <p>8 the sentence that I'm sure you're quite</p> <p>9 familiar with now.</p> <p>10 A. What's that?</p> <p>11 Q. The sentence on that page that</p> <p>12 reads, "In the event the hospitals are not</p> <p>13 operative and the university is not in</p> <p>14 material breach of the agreement, BQHC agrees</p> <p>15 to provide the university with an equivalent</p> <p>16 number of clerkships as agreed to herein at</p> <p>17 one of more of its other facilities."</p> <p>18 When did you first become aware</p> <p>19 that Mr. McDonald had signed a contract on</p> <p>20 behalf of Brooklyn-Queens Health Care that</p> <p>21 made the promise we've just quoted?</p> <p>22 A. I don't recall.</p> <p>23 Q. Was it before the Caritas</p> <p>24 bankruptcy?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">128</p> <p>1 Confidential - D. Hoffman</p> <p>2 BY MR. TZANETOPOULOS:</p> <p>3 Q. Have you ever had a conversation</p> <p>4 with anybody at Ross about the original --</p> <p>5 Bad question. Sorry. It's late in the</p> <p>6 afternoon, let me try again.</p> <p>7 At any time before Exhibit No. 2</p> <p>8 was signed in December of 2006, had you</p> <p>9 personally spoken with anybody at Ross about</p> <p>10 this transaction?</p> <p>11 A. Oh, sure.</p> <p>12 Q. With whom?</p> <p>13 A. You.</p> <p>14 Q. You didn't talk to me before 2006.</p> <p>15 I'm focusing back to at the time of the deal.</p> <p>16 A. Oh, at the time of the deal?</p> <p>17 Q. Right. Did you have interactions</p> <p>18 with the people at Ross?</p> <p>19 A. When was this again?</p> <p>20 Q. 2006.</p> <p>21 A. Oh, this was just before the asset</p> <p>22 purchase agreement for Caritas closed.</p> <p>23 No, I have no recollection of being</p> <p>24 involved in the negotiation of this deal. I</p> <p>25 believe I testified to that earlier today.</p>
<p style="text-align: right;">127</p> <p>1 Confidential - D. Hoffman</p> <p>2 Q. Has there ever been a time when you</p> <p>3 told Ross -- Strike that.</p> <p>4 Was there ever a time before the</p> <p>5 Caritas bankruptcy where you told Ross that</p> <p>6 that promise could not be performed?</p> <p>7 A. I don't understand your question.</p> <p>8 MR. LOUGHLIN: You mean Mr. Hoffman</p> <p>9 personally?</p> <p>10 MR. TZANETOPOULOS: Mr. Hoffman</p> <p>11 personally.</p> <p>12 THE WITNESS: Where I told Ross --</p> <p>13 BY MR. TZANETOPOULOS:</p> <p>14 Q. That BQHC could not provide the</p> <p>15 university with an equivalent number of</p> <p>16 clerkships as agreed to herein, in the event</p> <p>17 the hospitals were not operative?</p> <p>18 A. No, I do not remember saying that.</p> <p>19 MR. LOUGHLIN: If you have a</p> <p>20 specific conversation in mind, it might</p> <p>21 be helpful to refresh the witness's</p> <p>22 recollection if you identified someone</p> <p>23 other than just Ross as a whole. If you</p> <p>24 have a specific communication in mind.</p> <p>25</p>	<p style="text-align: right;">129</p> <p>1 Confidential - D. Hoffman</p> <p>2 Q. Right.</p> <p>3 Leaving aside the negotiation, I</p> <p>4 just wanted to know if you talked to anybody</p> <p>5 at Ross at that time?</p> <p>6 A. No. Frankly, I don't think I knew</p> <p>7 anyone at Ross at that time.</p> <p>8 Q. Would the same be true of the first</p> <p>9 and second amendments to the affiliation</p> <p>10 agreement, that at the time of those deals</p> <p>11 you had not talked to anybody at Ross about</p> <p>12 them?</p> <p>13 A. The first and second amendments</p> <p>14 being which exhibits?</p> <p>15 Q. 3 and 4, which I believe are</p> <p>16 December 2007 and February 2008.</p> <p>17 A. Well, considering that I was on my</p> <p>18 sabbatical on both of those dates and was</p> <p>19 precluded from talking to anyone about</p> <p>20 anything, the answer to that question would</p> <p>21 have to be no.</p> <p>22 Q. The parties obviously have had a</p> <p>23 mediation session. I know you and I and Tom</p> <p>24 Shepherd met with Rajiv Garg on that one</p> <p>25 instance. Let's leave those aside.</p>

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1 **Confidential - D. Hoffman**  
 2 **Have you had conversations with**  
 3 **anybody at Ross about these transactions or**  
 4 **this dispute, other than the mediation and**  
 5 **our meeting with Messrs. Shepherd and Garg?**  
 6 A. I recall having phone conversations  
 7 with DeVry's general counsel -- Mr. Davis is  
 8 it -- on several occasions. I have  
 9 absolutely no recollection of what we talked  
 10 about, other than having to do generally with  
 11 the relationship with Ross.  
 12 **Q. Has Wyckoff made any payments to**  
 13 **American University of the Caribbean to**  
 14 **satisfy in whole or in part the judgment that**  
 15 **American University of the Caribbean holds**  
 16 **against Wyckoff?**  
 17 A. I believe not. We've had some  
 18 settlement discussions. But as far as I can  
 19 recall, we have not made any payments.  
 20 MR. TZANETOPOULOS: Those are all  
 21 the questions that I have at this time.  
 22 MR. LOUGHLIN: I think I just have  
 23 one.  
 24 I only have one copy of this. This  
 25 is the complaint. If you can just mark

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1 **Confidential - D. Hoffman**  
 2 **this Exhibit 20.**  
 3 **(Hoffman Exhibit No. 20, Second**  
 4 **Amended Complaint, was marked for**  
 5 **identification.)**  
 6 **CROSS-EXAMINATION**  
 7 **BY MR. LOUGHLIN:**  
 8 **Q. Mr. Hoffman, I'm placing before you**  
 9 **an exhibit which has been marked as Hoffman**  
 10 **Exhibit 20 of today's date. It is the Second**  
 11 **Amended Complaint filed by Ross against BQHC**  
 12 **and Wyckoff. And I'd direct your attention**  
 13 **to Paragraph 78, which reads, I believe, "In**  
 14 **all meaningful respects, Wyckoff" -- meaning**  
 15 **Wyckoff Heights Medical Center -- "controlled**  
 16 **and controls BQHC."**  
 17 **My question is: As someone who has**  
 18 **been the chief legal officer of both of those**  
 19 **entities, are you in a position to say**  
 20 **whether that allegation is true or false?**  
 21 MR. TZANETOPOULOS: Objection.  
 22 Calls for legal conclusion.  
 23 THE WITNESS: I am in a position to  
 24 say. And that allegation is  
 25 structurally and demonstrably false

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1 **Confidential - D. Hoffman**  
 2 **based on the corporate relationship**  
 3 **between Wyckoff and BQHC.**  
 4 **BY MR. LOUGHLIN:**  
 5 **Q. And in your experience since 2003**  
 6 **as the chief legal officer of Wyckoff and**  
 7 **then also the legal advisor to BQHC, have you**  
 8 **ever experienced a situation in which Wyckoff**  
 9 **controlled or controls BQHC?**  
 10 MR. TZANETOPOULOS: Objection.  
 11 Lack of foundation. Calls for  
 12 conclusion.  
 13 THE WITNESS: No. Wyckoff has not,  
 14 does not, and could not, given the  
 15 nature of the structure agreed to with  
 16 St. Vincent's, control BQHC because  
 17 BQHC, in turn, was the passive parent  
 18 and sole corporate member of Caritas and  
 19 that would constitute prohibited  
 20 cooperation between an entity that  
 21 conforms to the ethical and religious  
 22 directives and one that does not.  
 23 MR. LOUGHLIN: That's the only  
 24 question I have.  
 25 MR. TZANETOPOULOS: Nothing further

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1 **Confidential - D. Hoffman**  
 2 **here.**  
 3 **Thank you for your time, sir.**  
 4 **THE WITNESS: All right.**  
 5 **(The above deposition concluded at**  
 6 **2:53 p.m.)**  
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<p style="text-align: right;">134</p> <p>1 2           A C K N O W L E D G E M E N T 3 4       STATE OF NEW YORK ) 5                               ) ss: 6       COUNTY OF NEW YORK ) 7 8           I, DAVID HOFFMAN, hereby certify, I 9       have read the transcript of my testimony 10      taken under oath in my deposition of June 1, 11      2011; that the transcript is a true, complete 12      and correct record of what was asked, 13      answered and said during this deposition, and 14      that the answers on the record as given by me 15      are true and correct. 16 17 18                               _____ 19                               David Hoffman 20 21 22      Subscribed and sworn to before me 23      this ____ day of _____, 2011. 24 25      _____ Notary Public</p>	<p style="text-align: right;">136</p> <p>1 2           I N D E X 3 4       WITNESS: DAVID HOFFMAN                       PAGE 5       DIRECT EXAMINATION 6       BY MR. TZANETOPOULOS..... 5 7       CROSS-EXAMINATION 8       BY MR. LOUGHLIN..... 130 9 10 11           E X H I B I T S 12 13      HOFFMAN EXHIBITS MARKED 14      EXHIBIT DESCRIPTION                       PAGE 15      No. 1   Protective Order signed by 16              the court reporter..... 4 17      No. 2   Affiliation Agreement 18              Between Ross School of 19              Medicine, School of 20              Veterinary Medicine, 21              Limited, Portsmouth, 22              Dominica and Brooklyn-Queens 23              Health Care, Inc., Bates 24              numbered ROSS0056 through 25              ROSS006..... 35</p>
<p style="text-align: right;">135</p> <p>1 2           C E R T I F I C A T I O N 3 4       I, ASHLEY SHUGAR, a Notary Public, 5       do hereby certify: 6       That the foregoing witness, DAVID 7       HOFFMAN, was duly sworn by me on the date 8       indicated, and that the foregoing is a true 9       and correct record of the testimony given by 10      said witness. 11      I FURTHER CERTIFY that I am not 12      related to any of the parties to this action 13      by blood or marriage, and that I am in no way 14      interested in the outcome of this matter. 15      IN WITNESS WHEREOF, I have hereunto 16      set my hand this 3rd day of June, 2011. 17 18 19 20                               _____ 21                               Ashley Shugar 22                               Notary Public, State of New York 23                               Qualified in New York County 24                               No.: 01SH6232448 25                               Expires: December 13, 2014</p>	<p style="text-align: right;">137</p> <p>1 2      No. 3   Amendment to Affiliation 3              Agreement Between Ross 4              School of Medicine, School 5              of Veterinary Medicine, 6              Limited, Portsmouth, 7              Dominica and Brooklyn-Queens 8              Health Care, Inc. Through 9              Caritas Health Care, Inc., 10             Bates numbered ROSS0052 11             through ROSS0055..... 37 12      No. 4   Second Amendment to 13              Affiliation Agreement 14              Between Ross School of 15              Medicine, School of 16              Veterinary Medicine, 17              Limited, Portsmouth, 18              Dominica and Brooklyn-Queens 19              Health Care, Inc. Through 20              Caritas Health Care, Inc., 21              Bates numbered ROSS0105 22              through ROSS0109..... 38 23 24 25</p>

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